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Lowell L. Bates, for Respondents—Direct

(5185) LOWELL L. BATES was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Bates, do you want to give your full name and the place where you live to the reporter? A. Lowell L. Bates, 1223 Grand, Grand Junction, Colorado.

Q. Now, what's your business? A. I'm a service station operator.

Q. What sort of gasoline do you sell? A. Texaco.

Q. And do you lease your station? A. I lease the station from the Texas Company.

Q. Where is it located? A. At Fifth and White Avenue, Grand Junction, Colorado.

Q. You've been a lessee for five and a half years? A. Yes.

(5186) Q. What's your monthly gallonage at your station? A. Last month it was 25,000 gallons. It would be in excess of that.

Q. Do you handle TBA? A. Yes, I do.

Q. Will you tell us why you handle it? A. TBA and gasoline go together. I mean, it's a one-stop service.

Q. You mean the sale of one helps the other? A. Yes, they do.

Q. It works both ways? A. Yes, it does.

Q. Do you make money on the TBA? A. I certainly do. I try to.

Q. Well, I guess you do, don't you? A. I sure do.

Lowell L. Bates, for Respondents—Direct

Q. Now, during the time you've been a lessee, have you had an understanding as to the Texas Company's TBA policy and its TBA program? A. Yes, I have.

Q. What has been your understanding? A. Well, I've always handled whatever I wanted to handle. I've always bought whenever I wanted to buy.

Q. Well, now, in addition it was your understanding that you could so do? (5187) A. Yes.

Q. Well, now, did anyone from Texas ever recommend to you that the Firestone line was a good line and that the Goodrich line was a good line? A. Yes, they did.

Q. Has anyone from the Texas Company ever threatened that your lease would be canceled or that you would be treated badly in any way if you didn't handle the Firestone or the Goodrich line, or substantial parts of it? A. No.

Q. Now, will you tell us who your suppliers of TBA are? A. All TBA you mean, or—

Q. Yes. Just list the suppliers, if you can. A. Henry Bolthorf.

Q. Tell us in general what you buy from each one of those suppliers. A. From those I buy, oh, parts, auto parts, like maybe engine radiators, voltage regulators, plugs, and that sort of thing.

B. K. Sweeney Company, same general accessories.

Auto Equipment Company, same general accessories.

Q. Well, now, from the Auto Equipment Company you buy pretty nearly all of what we've been calling accessories, don't you? A. Yes, I do. And I buy—

(5188) Q. You buy caps, car rugs, cleaners, fan belts, filters, radiator hose, waxes, that sort of thing? A. Yes.

Q. And that's not connected with either Firestone or Goodrich, is it? A. It is not, no.

Q. Do you buy from them Gates fan belts and radiator hose? A. Yes.

Lowell L. Bates, for Respondents—Direct

Q. Openly display that? A. Yes, they are.

Q. They are hung on the usual Gates racks, are they?

A. Yes.

Q. All right. Now, do you want to tell us some more people from whom you buy TBA? A. Bowes Sealfast. That's a distributor.

Q. Do you buy all your battery cables from them? A. Yes, I do.

Q. And you buy some caps? A. Yes.

Q. And some cleaners? A. Yes. Chemicals.

Q. And some radiator hose? Or was that all Gates?

A. Radiator hose is all Gates.

Q. All Gates? A. Yes.

(5189) Q. Is that the same Bowes line which puts out a dealer magazine? A. Yes, it is.

Q. Well, now, has your picture ever appeared on that Bowes dealer magazine? A. Yes, it did.

Q. You were pictured in there as a Bowes product dealer? A. Yes, I was.

Q. Now, from whom do you—what kind of batteries do you handle? A. I handle B. F. Goodrich, U. S. Royal, and I believe I have three Delcos of the original equipment Delco in stock.

Q. How many Goodrich batteries would you say you have in stock? A. Ten or twelve.

Q. And how many U.S.? A. Ten or twelve.

Q. Now, let's come to tires. What kind of tires do you handle? A. I handle B. F. Goodrich and U. S. Royal.

Q. Now, about how many U. S. tires do you have in stock? A. At the time I think about 30.

Q. You mean as of now? A. Yes.

Q. And how many B. F. Goodrich tires do you have in stock? A. Possibly 10; maybe 8 or 10.

(5190) Q. What percent of your total tire sales are made out of stock and what percent is made on a pickup basis? A. Oh, 75, 80% is pickup basis.

Lowell L. Bates, for Respondents—Direct

Q. And you pick up both Goodrich and U. S., and any other make that they ask for? A. Yes, I do.

Q. Now, do you display all of your TBA, no matter from what source? A. Yes, I do.

Q. And that goes for your U. S. tires? A. Yes.

Q. And your U. S. and Delcô batteries? A. Yes.

Q. You don't make any effort to hide anything? A. No, I do not.

Q. Has any representative of the Texas Company ever told you to hide any of the TBA which you did not buy from Firestone or Goodrich? A. No.

Q. Or told you that your lease would be cancelled or you would be treated badly in any way if you didn't stop handling that line? A. No, I have not.

Q. Incidentally, do you know what division headquarters are over your particular setup? (5191) A. Denver.

Q. Who is your TBA representative? A. Deck Underhill.

Q. Now, can you— A. That's out of the division, you meant?

Q. He's the division representative? A. Division, is that what you meant?

Q. Yes. That's what I asked you. He's the division representative? A. Yes.

Q. Now, can you give me an estimate of about how much of all of your TBA sales are in accessories as distinguished from tires and batteries? Not in dollars, in percent. A. Oh, 50% I'll say.

Q. You'd say about half of all your TBA sales are accessories? A. Yes.

Q. And the balance is in tires and in batteries? A. Yes.

Q. And would you, Mr. Bates, say you sell some more tires than you do batteries? A. Yes. Oh, yes.

Lowell L. Bates, for Respondents—Direct

Q. Do you get any help in merchandising your TBA from the Texas Company or its representatives? A. Yes, I do.

Q. What sort of help do you get? (5192) A. Oh, there's all kinds. There's sales help, display ideas, kind of merchandise for the time of year, and all that sort of thing.

Q. You mean at which time of year which type of TBA moves best, that sort of thing? A. Yes.

Q. You get suggestions like that from the Texas Company? A. Yes, I do.

Q. And do you find those suggestions help you sell all of your TBA, whether it's from the Firestone and Goodrich line or some other place? A. Yes.

Q. Do you buy any accessories from Goodrich? A. No.

Q. All of that is bought from some place other than Goodrich or Firestone? A. Yes, it is.

Q. Now, will you tell me why you handle the Goodrich line of tires and batteries to the extent that you do handle it? A. Why I handle it?

Q. Yes. A. I make more money on it. I get a better percentage on it right now.

Q. You buy direct now, do you? A. Yes, I do.

(5193) Q. From Denver? A. Yes.

Q. And that— A. There is a warehouse there, right there in Grand Junction.

Q. But you buy directly from the— A. I'm billed direct from—

Q. You're billed direct? A. Yes.

Q. And that gives you a much better discount than if you bought locally, is that right? A. Yes.

Q. And is that the occasion—is that why you now handle this Goodrich line of tires and batteries? A. Yes. That's one reason.

Lowell L. Bates, for Respondents—Cross

Q. What are some of the others? A. B. F. Goodrich is an original equipment tire, and therefore replacements are sold.

Q. That is, there is a demand for the Goodrich tire?
A. Yes.

Q. Are there other B. F. Goodrich dealers in Grand Junction? A. Yes.

Q. Are there other—now—I will withdraw that. Can you make your own adjustment? A. Yes, I do do my own adjusting, yes.

(5194) Q. And is that an advantage to you? A. Yes, it is. Very much.

Q. Have you made an effort to obtain from the U. S. Rubber Company the same sort of a deal you have with Goodrich? A. Yes.

Q. Have you succeeded? A. Not yet, no.

Q. Still trying? A. Yes, I do try.

Q. And if you do get a similar sort of a deal, would you feel free to take it? A. I'd buy spot purchases, yes.

Mr. Lorenzen: That's all.

Cross-examination by Mr. Dias:

Q. Will you explain this direct purchase from B. F. Goodrich, please? Is it direct purchase or direct billing?
A. Direct billing.

Q. And— A. It would be a direct purchase, I suppose. I draw direct from the warehouse.

Q. And the warehouse is where? A. In Grand Junction.

Q. Oh, the warehouse is in Grand Junction? A. Yes. And I also can ship from Denver if they haven't (5195) got it—the particular thing—in the warehouse, see?

Q. You mean Denver will ship to you? A. Yes.

Lowell L. Bates, for Respondents—Cross

Q. What is that deal? In other words, is it a quantity affair? Do you have to buy a certain number in order to get this better price? A. Yes.

Q. And what is— A. A year, you mean?

Q. Per year. And what is the quantity per year? A. 25,000.

Q. 25,000 tires? A. Dollars.

Q. Oh, dollars. A. Volume.

Q. And I take it that your purchases of the Goodrich tire do amount to \$25,000.00 a year, and that is the reason why you get this special price, is that right? A. They don't amount to may—maybe not any particular year, no. I'm signed up on that agreement.

Q. Oh, is this something new that you're on? A. No, it is not.

Q. Well, I'm a little bit confused. How do you get the special price then? In other words, if you don't buy 25,000, what happens then? (5196) A. I'm still billed at that price.

Q. You're still billed at the lesser price? A. Yes.

Q. See if I understand this now. You go into the Goodrich people and you say, "Put me on a \$25,000.00 quantity"— A. Well, I don't know whether you—

Q. I'm not trying to confuse you. I'm trying to unconfuse myself. A. Yes.

Q. Is it based on the previous year's purchases? You say— A. Yes. Yes, it was previous.

Q. In other words, last year you sold \$25,000.00, and for that reason this year you're operating in that price category, is that correct? A. That could be correct.

Q. Well, it could be, but is it? That's what I want to know. A. I haven't quite made any \$25,000.00, if that's what you're getting to.

Lowell L. Bates, for Respondents—Cross

Q. Well, then maybe this confuses things. Do they operate on a calendar year basis, January to December?

A. Yes.

Q. And you haven't made your \$25,000.00 this year, is that what you say? A. Yes.

Q. Now, how about—this is '58. How about 1957? Did (5197) you make your \$25,000.00 in '57? A. No, I did not.

Q. I see. This then is the first year that you're trying for this, is that— A. Yes.

Q. I see. How much Goodrich did you sell last year? A. I don't know.

Q. Would it be about 15, 20,000? A. Fifteen.

Q. About fifteen. In other words, it must have been some sizable figure that led you to believe that you might make the 25,000 category this year, isn't that so? A. Yes.

Q. And can you tell us roughly what your sales have been to date on Goodrich tires? A. I remember last month's bill.

Q. And what was that? A. 1308.

Q. That's \$1,308.00? A. Yes.

Q. All right. Now, how have your previous bills compared with that one? Are they higher or lower? A. Slightly lower.

Q. Slightly lower. Would it be within a range of \$100.00 maybe? (5198) A. Yes.

Q. Less than \$100.00? A. Less than \$100.00.

Q. About \$50.00 difference in bills? In other words, each month so far have you purchased at least \$1,308.00 worth of Goodrich tires, or something within \$50.00 range?

A. Within—yes.

Q. Each of the months to date, is that so? A. Yes.

Q. So that when you tell us that you have ten Goodrich tires on your racks, that isn't very significant, is it? You

Lowell L. Bates, for Respondents—Cross

don't have them up there—you don't have your complete stock up there? A. No, I do not.

Q. You draw them as you need them? A. Yes.

Q. And your purchases are sizable, are they not? A. Yes.

Q. Now, what is the situation in connection with Royal? Have you sold that many Royals this year? A. No, I have not.

Q. Can you tell us how many Royals you've sold? A. How many dollars worth?

Q. Dollars, units—dollars we'll say, per month. A. Three or four hundred.

(5199) Q. Per month? A. Per month, possibly.

Q. Now, did the batteries, the Goodrich batteries, also come under that same deal that you're talking about? A. It's included with the tire purchases.

Q. Included with the tire purchases? A. Yes.

Q. So once again the ten to twelve Goodrich batteries on the shelf have no significance; do they? A. No.

Q. Can you give us some idea of how many batteries you sell per month? A. I don't know—35, 40.

Q. 35 to 40? A. I don't know. I'm just guessing. I don't know.

Q. All right. Can you give us some estimate on the number of Royals that you sell per month? A. Slightly less.

Q. All right. How much is slightly? A. 20 or 25.

Q. You sell about 20 or 25? A. Yes.

Q. And Delco? A. Less yet of Delco. It's possibly ten, twelve a month.

Q. Did you say that you carried the Goodrich because—for (5200) one reason because it's original equipment? A. Yes.

Q. What's your experience with the Delco battery? Is that original equipment? A. It is.

Lowell L. Bates, for Respondents—Redirect

Q. Let me check my geography. Is Grand Junction about 50 miles outside of Denver? A. Grand Junction is 260 miles west.

Q. West of— A. Of Grand Junction.

Q. Do you go through— A. I mean, west of Denver. Excuse me.

• • •

(5201) *Redirect examination by Mr. Lorenzen:*

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(5202) Q. Well, let's see. You said you sold most Goodrich batteries? A. Yes.

Q. And then your U. S.—no, your—yes, your U. S. batteries were kind of a close second, and then the Delco batteries sort of lagged behind? A. Well, the Delco is usually sold—they will request the Delco battery.

Q. They don't? A. They will.

Q. They will? A. Yes.

Q. And you only sell those on specific request? A. Yes.

Q. The Goodrich and U. S. batteries depend on your own salesmanship to sell them? A. That's right. That's absolutely right.

Q. And you make more money selling the Goodrich than you do on any other? A. Yes, I do.

Q. And does the same apply to your tires? You make the most money when you sell the Goodrich tire? (5203) A. Yes.

Q. And so naturally you try to sell that just as hard as you can? A. Yes.

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Dale Retke, for Respondents—Direct

(5204). DALE RETKE, called as a witness for and on behalf of the Respondents, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you state your full name and your home address? A. Dale Retke; 1217 Lewis, Laramie, Wyoming.

Q. What is your business? A. Texaco station operator.

Q. Do you sell Texaco gasoline? A. Yes.

Q. And you lease a station from the Texas Company? A. Yes.

Q. What is the location of that station? A. 420 S. Second Street, in Laramie.

Q. About what is the gallonage of that station? A. It averaged about 13,500 a month, last year.

Q. Do you handle any TBA? A. Yes.

Q. Will you tell me why you handle it? A. We need the money. You have more satisfied customers (5205) if they can meet all their needs at one stop.

Q. They help you sell gasoline to them, do you think? A. Yes, it helps to sell gas and the gas helps you to sell TBA.

Q. Have you had an understanding as to the Texas Company's TBA policy and program during the time you have operated this station? A. Yes.

Q. What is that understanding? A. They sponsor Firestone and B. F. Goodrich TBA but they sell whatever is your choice.

Q. And, in fact, you have bought on that principle that you can buy anything you want? A. That is right.

Q. Has anyone from the Texas Company ever told you that your lease would be cancelled or that you would be treated badly in any other way if you didn't handle all or some of the Firestone products? A. No, they haven't.

Dale Retke, for Respondents—Direct

Q. Or the Goodrich products? A. No, they never have.

Q. Will you tell us who your suppliers are? A. Casper Supply Company supplies Gates fan belts and accessories.

Q. Do you buy all of your fan belts from them? (5206)

A. Yes.

Q. And all of your radiator hose? A. Yes.

Q. Are those belts and radiator hose displayed with the Gates name on them? A. Yes, on the Gates display rack.

Q. On the Gates display rack with the name Gates across the top of it? A. Yes.

Q. From whom else do you buy? A. From the Laramie Auto Parts Company; they are the Firestone distributor.

Q. You buy some of your accessories from them, do you not? A. Yes, we do.

Q. And you buy some of your tires and some of your batteries from them? A. That is right.

Q. From whom else do you buy? A. Frank King Service is a recap shop and tire warehouse.

Q. Do you have your recapping done there? A. Some of it, yes.

Q. How about the S. & B. Tire Sales? A. They supply Gates tires and do some Goodyear recapping.

(5207) Q. Do you buy the Gates tires from them? A. Yes.

Q. And you have the recapping down there too? A. That is right.

Q. And how about the Azar Auto Supply; do you buy from them? A. That is in Denver; they supply some accessories.

Q. And you buy some from them? A. Yes; that is right.

Q. Who is Jim Harris; is he a local man? A. Jim Harris is the Bardahl distributor for that area. He comes from Cheyenne and delivers Bardahl supplies.

Dale Retke, for Respondents—Direct

Q. You buy that additive from him? A. Yes.

Q. And you also buy some from the Wynn Distributing Company? A. Yes; he is from Cheyenne.

Q. And you buy some additives from him? A. Yes.

Q. In addition to the Firestone batteries what kind do you handle? A. Delco.

Q. And from whom do you buy those? A. Casper Supply.

Q. As of now how many Firestone batteries do you have (5208) in stock and how many Delcos? A. Approximately three of each. It depends upon whether one was sold today. I keep three and if I sell one, I get another one.

Q. Then you buy another one? A. Yes.

Q. Do you display your Delco just like you do your Firestone? A. Yes, I do. Sometimes I have more Firestone and sometimes more Delco. I have some of them in the display.

Q. But you display Delco from time to time? A. Yes.

Q. With the sign "Delco" on them so that people can see them? A. That is right.

Q. How about tires; in addition to Firestone, what kind of tires do you sell? A. Gates.

Q. Can you tell me about what percent of your tire sales are made out of stock and about what percent you have to make on a pickup or spot delivery basis? A. I would say 75 to 80 percent are pickup.

Q. And you order for the customer whatever tire he wants, is that right? A. Yes.

(5209) Q. It may be Firestone and it may be Gates, and it may be something else? A. Yes; it may be Goodyear. I have sold some Goodyear tires also.

Q. Now, tell me as far as your Firestone tires go, have you got some sort of an arrangement now with the Firestone dealer whereby he puts them in your place on con-

Dale Retke, for Respondents—Direct

signment? A. Yes; I just recently took on a consignment arrangement with the Firestone dealer. I am going to keep approximately 30 tires on consignment.

Q. That means you don't have to pay for the stock?

A. Yes, as I sell he will replace whatever tires I sell from the stock.

Q. But the Gates tires that you stock you have to pay for before you sell them? A. That is right.

Q. Do you advertise the Gates tire in front of your station? A. Yes, I do.

Q. Do you have a tire rack with a Gates sign on it? A. Yes; it is what they call a self-service rack.

Mr. Lorenzen: I ask to have this photograph marked Respondent's Exhibit 60.

(The paper referred to was marked Respondent's Exhibit 60, for identification.)

(5210) *By Mr. Lorenzen:*

Q. Is Respondent's Exhibit 60 for identification a picture of your Gates tire, self-service tire stand, with the Gates sign on top of it? A. Yes; that is right.

Q. And is that a stand and a sign which you regularly have in front of your station? A. Yes, it has been there for probably ten months to a year.

Q. And you display your Gates tires openly in that? A. Yes.

Q. Has anybody from the Texas Company threatened you with lease cancellation or they would treat you badly in any other way if you didn't get rid of that Gates stand and sign? A. No; they did ask me why I changed and I explained to them that they had a better selling policy than Firestone and that is why I made the change, and nothing was said that the lease would be cancelled.

Dale Retke for Respondents—Direct

Q. And since that time the Firestone Company has made this better deal for you so that you could put those Firestone tires in on consignment, is that right? A. That is right.

Mr. Lorenzen: I offer this picture, marked Respondent's Exhibit 60, into evidence.

(5211) Mr. Dias: Are there any Firestone signs outside your station?

The Witness: We have the Firestone decals on the window; that is all.

Mr. Dias: You don't have any of those big signs outside?

The Witness: I believe there is one sign that says Firestone tire service or tires.

Mr. Dias: Is that over near the lube rack?

The Witness: It is over near the lube rack, yes.

. . .

By Mr. Lorenzen:

Q. What do you find about public demand by your customers for Firestone tires? Do you find some that ask for their tires? A. Yes, they are original equipment tires on quite a few of the cars, and they do demand with the replacements, the same brand tire.

Q. So that with those people you find it easier to (5212) sell Firestone? A. Yes; that is right.

Q. Now, what about the profit that you make,—you told me, and Mr. Dias, just now that you explained to the Texas Company you made more profit on some lines of the Gates tire. Now, do you make a better profit on some lines of the Firestone tire? A. That is right. Some of your nylon and your 500, and that quality tire there is a better profit than there is in the Gates.

Dale Retke, for Respondents—Direct

Q. How far are you from the Firestone warehouse? A. About half a block.

Q. What do you find about your ability to sell the Firestone tire or the Gates tire to your transient customers?

A. I think the Firestone sells easier to your transient trade. It is a more popular national brand.

Q. Now, does the Firestone supply point and its employes give you any business? A. Yes, they do.

Q. Quite a bit? A. Their store is within half a block of the station and there is, I would say, a good half of their business is done in my station, by their employes and their own trucks.

(5213) Q. So they patronize you and you buy from them? A. That is right.

Q. Do you have an estimate as to how much—

Mr. Lorenzen: I will withdraw that.

By Mr. Lorenzen:

Q. Do you stock any batteries other than dry charge? A. No.

Q. Has anyone from the Texas Company ever made any threat to you that the lease would be cancelled or that you would be treated badly if you didn't stop handling these Gates tires and Delco batteries? A. No threats have been made.

Q. Or any of the other TBA which you buy from source other than Firestone? A. No, sir; no threats were ever made.

Q. Do you attend dealers' meetings of the Texas Company? A. Yes.

Q. Have any threats ever been made at any of those meetings to you or any other dealers? A. No.

Q. Have any dealers ever complained to you that threats have been made to them? A. No; none.

Dale Retke, for Respondents—Cross

Q. Do you get any help from the Texas Company in merchandising your TBA? (5214) A. Yes, they have sales meetings. They tell when is the best time of the year to push certain brands of merchandise and how to go about making sales,—just of general help.

Q. Is that of help to you in connection with all of the TBA which you sell? A. Yes, it is.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. Mr. Retke, if you told us when you started in business, I missed it. Would you mind telling me again? A. About two years ago; two years ago, November 15th.

Q. You started in November of 1956? A. Yes.

Q. Were you in the gas station business before you took this station? A. No.

Q. Was that a new station that you got? A. No.

Q. It was an old station? A. It was an old station.

Q. When you moved in? A. Yes.

Q. Do you recall the TBA supplies that were in the station (5215) when you moved in? A. They were mostly Firestone at that time,—Firestone tires and batteries.

Q. And you bought it from the previous owner; did you? A. Yes, I bought the stock and the equipment.

Q. In negotiating with the prior lessee did the Texas Company help out in that transaction taking inventory? A. No, they didn't take inventory.

Q. You just made your arrangements with the prior lessee, is that right? A. That is right.

Q. You say that there were Firestone tires and batteries in there when you took over? A. Yes; Firestone tires and batteries.

Q. And were there some Firestone accessories? A. Yes; there were some Firestone accessories. There were

Dale Retke, for Respondents—Cross

some other accessories, though, that weren't Firestone.

Q. Well, I take it that Firestone tires and batteries,—that is all he had in those two lines, is that correct? A. That is right.

Q. Did you, in negotiating with the Texas Company for the station, do you recall that they recommended Firestone or Goodrich as a TBA supply? A. Yes; they suggested that as long as that line was there, that I try it, and if there were any complaints (5216) to go ahead and do as I saw fit.

Q. And did you thereafter, when the stock that you bought became depleted; did you buy more Firestone tires, batteries and accessories? A. Yes, I have ordered Firestone tires and batteries as I need them.

Q. Did you then have some difficulty with the Firestone distributor? A. No trouble with the distributor.

Q. Or the merchandise? A. No; no trouble with the distributor.

Q. When did you discontinue stocking the line exclusively in tires and batteries? A. Approximately six months after I took over the station.

Q. Was there any reason for that? A. It was the location of the station. There is a Coast-to-Coast hardware store which sells a cheaper brand of tires than I do, right across the street, and a Gamble store across the street which sells cheaper tires.

Q. So that from a competitive standpoint you had to buy stocks of cheaper tires? A. That is right.

Q. And cheaper batteries, too, is that right? A. Yes.

Q. And you said that the Texaco salesman asked you why (5217) you changed and I assume you explained that to him, did you? A. Yes.

Q. And did he attempt, so far as you know, to get you a better price on Firestone tires and batteries? A. Not that I know of.

Dale Retke, for Respondents—Redirect

Q. But he has now arranged, I assumed, this consignment deal he worked up? A. That was an arrangement between me and the Firestone distributor,—not with the Texaco representative.

Q. Who is the Firestone distributor? A. The Laramie Auto Parts store, who have a Firestone department, and a Parts Department in the same store.

Q. You mentioned you talked to these other dealers at the dealer meeting; how many other Texaco stations are there in Laramie, do you know? A. Seven, including us.

Q. Seven in all? A. Yes.

Q. Do you know those stations pretty well? A. Yes.

Q. Can you tell us what type of TBA they carry? Isn't it true that they carry mostly Firestone? A. There is one besides myself, who sells Gates.

Q. And the others carry Firestone? A. Firestone and some B. F. Goodrich.

(5218) Q. And are they lessees the same as yourself? A. I think they are all the same.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. At these dealer meetings do you come in contact with dealers other than the ones just in Laramie? A. Yes, there are some from the surrounding communities, smaller towns, that come in to them.

Q. And do you have some larger meetings twice a year, in the fall and in the spring, with the dealers from all over?

A. Well, from the smaller surrounding towns they come in in the spring and the fall, usually.

Q. Now, before you took over this station, in November, 1956, had you placed any new order with the Firestone store? A. No.

Fred Pryor, Recalled, for Respondents—Redirect

Q. Before you placed any order with that Firestone store did competing salesmen from other places call on you? A. Yes; I was called on at the time I took over by several B. F. Goodrich, Gates and people having several other lines of tires and accessories.

Q. And within six months you started to place orders with Gates? A. That is right.

(5219) Q. Now, you said that there were non-sponsored accessories in the station when you took it over. Did you buy those, too? A. Yes, I bought everything that was in stock.

Q. And the Texas Company knew about that? A. Yes.

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(5220) FRED PRYOR was thereupon recalled for the Respondent and, having been previously duly sworn, was examined and testified further as follows:

Redirect examination by Mr. Lorenzen:

Q. Mr. Pryor, who does the bookkeeping in your family? Could you tell us that? A. My wife.

Q. Not you. A. No.

Q. Since giving the testimony about how much gasoline you pumped this morning, have you had an opportunity to call up the bulk plant which supplies you with gasoline and check up on the deliveries to you? A. I sure did.

Q. And did you find that your testimony, that you pumped an average of about 800 gallons a week, was too low a figure? (5221) A. That is a little low.

Q. Will you give us the figures from the bulk plant as to what was actually delivered to you last year? A. Well, this morning when I answered, I meant 800 gallons a day.

Q. You meant 800 a day instead of 800 a week. A. That's right.

Gordon B. Patterson, for Respondents—Direct

Q. What were your figures last year? A. Gas for the 12 months of 1957 was 122,450.

Q. What does that average to a month? A. 10,204.

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(5222) GORDON B. PATTERSON was thereupon called as a witness for Respondent and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Give your name to the reporter, will you? A. Gordon B. Patterson.

Q. And where do you live? (5223) A. Denver, Colorado.

Q. What business are you in? A. I am a Texaco dealer.

Q. Do you sell Texaco gasoline? A. Yes, sir.

Q. And you lease your station from the Texaco Company. A. Yes, sir.

Q. Are you in under one of those leases that renews itself each year unless it is cancelled at the end of the year? A. Yes, sir.

Q. What is the location of your station? A. 46th and York.

Q. In Denver? A. In Denver.

Q. What is the average monthly gallonage of your station? A. Oh, 50,000 gallons.

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Q. Do you handle it—do you handle TBA in your station? A. Yes, sir.

Q. Will you state why you handle it? A. Well, I think it makes for better business. I (5224) think it helps your gasoline sales and makes more money.

Q. Now, how long have you been in this station? A. Three years.

Gordon B. Patterson, for Respondents—Direct

Q. During that time have you had an understanding as to the Texas Company's TBA policy and program? A. Well, I understand they recommend that you handle Firestone or Goodrich products, but I have always bought anything I felt was to my own benefit.

Q. And did you do that because you understood the policy to be that you could buy where you wanted to buy?

A. Yes.

Q. And so you have done so. A. Yes, sir.

Q. And is all of the TBA which you handle handled by you because you think it is the best for your own business to handle those particular brands? A. Yes. Right.

Q. That is the only basis for your choice. A. Right.

Q. Now, has anyone from the Texas Company ever told you that they would cancel your lease or treat you badly if you did not handle all of the recommended lines of TBA?

A. No, sir.

Q. Or if you did not handle some of them? (5225)

A. No, sir.

Q. Will you tell us who your TBA suppliers are? A. Oh, I buy from Standard Tire Company—

Q. That is the Firestone supplier? A. That is the Firestone representative. And I buy from Auto Equipment Company of Denver.

Q. You buy a good deal of your accessories from them.

A. Yes. duPont line. Fan belts—

Q. And Gates? A. Gates Factory Store. I buy tires from them.

Q. And you buy all your fan belts from them? A. No, I buy my fan belts from the Motor Cool Company. I believe the fan belts come from a different supplier than Gates. Gates is tires only.

Q. Motor Cool Radiator Company, is that it? A. Yes. I buy hose connections and fan belts.

Gordon B. Patterson, for Respondents—Direct

Q. And that is the Gates fan belt you buy there. A. Yes. The Gates fan belt. And Gates hose.

Q. You handle all Gates. A. Yes.

Q. Is that a thermostat line—this Dole I have down here? A. That comes from Auto Equipment.

Q. And you handle that. A. Yes.

(5226) Q. Do you handle any other thermostat line? A. Harrison.

Q. That comes from Motor Cool? A. That comes from Motor Cool, yes.

Q. That is not a Firestone or Goodrich supplier. A. No.

Q. And you display all of those, with their brand names, do you? A. Yes.

Q. So that anybody can see them, including the Texas Company salesmen? A. Yes.

Q. Now, what other supplier do you use for your TBA? A. Oh, I buy from Wynn Oil, and Bardahl.

Q. Those are additives. A. Yes. B. K. Sweeney Company.

Q. Where do you get your spark plugs? A. I buy from Phillips 66—a service station. We buy together at a little better price.

Q. What about your batteries? A. I buy from Grant. Grant Batteries.

Q. Do you handle those Grant batteries 100 per cent? A. Yes, sir.

Q. What about tires? Do you handle some Firestone? A. Firestone and Gates.

(5227) Q. Do you stock some of each? A. Yes.

Q. You stock more Firestone than Gates. A. I do.

Q. Of all your tire sales, what per cent is out of stock, and what per cent is on a pickup basis or spot delivery basis? A. I suppose it is probably 75 per cent pickup.

Q. Do you order and pick up whatever make tire the customer wants? A. Yes, sir.

Gordon B. Patterson, for Respondents—Direct

Q. Or whatever— A. Anything I can sell.

Q. Or whatever make you suggest or succeed in selling, is that right? A. Surely.

Q. Now, has the Texas Company ever told you to hide or to not display any of your TBA? A. No, sir.

Q. Have they ever told you they would cancel your lease or otherwise treat you badly if you did not stop the display of TBA not in the Firestone or Goodrich line? A. No, sir.

Q. Nothing like that has ever happened to you. A. No.

(5228) Q. Where do you display your Gates Tires? A. I display them on the tire rack. I got samples sitting out in front.

Q. Is that on a stand marked with the Gates name? A. Yes.

Mr. Lorenzen: I ask to have this photograph marked Exhibit 61.

(The paper referred to was marked Respondent's Exhibit 61 for identification.)

By Mr. Lorenzen:

Q. Is Exhibit 61 a picture of your station, showing the Gates tire and the Gates stand? A. Yes, sir.

Q. Was any special preparation made when that picture was taken? A. No; that is what it is.

Q. Is that the way your station looked and had looked for some time before the picture was taken? A. Yes, sir.

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Mr. Dias: Do you know when this picture was taken, Mr. Patterson?

(5229) The Witness: Yes, sir. It hasn't been long ago.

Gordon B. Patterson, for Respondents—Direct

Mr. Dias: Do you know who took it? Did you take it?

The Witness: No.

Mr. Dias: Are these the only ads you have about the station?

The Witness: Do you mean for Gates tires?

Mr. Dias: No, of anything. Do you have a Firestone sign?

The Witness: Yes, sir; there is a Firestone Tire sign.

Mr. Dias: Is that the big one outside?

The Witness: On the tire rack.

Mr. Dias: Do you have Firestone valances?

The Witness: You mean decals?

Mr. Dias: Decals, yes.

The Witness: No.

Mr. Dias: What other Firestone ads do you have around there that this picture does not show?

The Witness: Well, I don't believe I have any other Firestone, except on the big tire rack, and that is at one side of the station.

Mr. Dias: Is that where you have the Gates tires, too, right with that same rack?

The Witness: Yes. I have them in that rack, (5236) and I have another rack inside. One out on the street.

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By Mr. Lorenzen:

Q. What about your Grant batteries; are they in your station? A. Yes, sir.

Q. Do you make any effort to hide those? A. No, sir.

Q. Are they on display? A. Yes, sir.

Q. With the Grant name on the battery? A. Yes, sir.

Gordon B. Patterson, for Respondents—Direct

Q. Can you tell us what per cent of all of your TBA is in accessories? If you take your TBA together, about how much of the sales are in accessories? A. I think it is about fifty per cent, probably.

Q. And then about how much is in tires? A. About thirty-five.

Q. If I can subtract, that leaves about fifteen per (5231) cent for your batteries. A. About that, yes.

Q. Have you participated in any advertising of the Gates tire in newspapers or anything like that? A. Yes. I am in the newspaper ads.

Q. The name of your station is— A. About every three months.

Q. The name of your station is listed under—? A. Gates.

Q. Under the Gates ad? A. Yes.

Q. How about the classified telephone directory? Are you listed there under—? A. Under Gates tires.

Q. How about Grant Batteries, do you know? A. No, I am not.

Q. Do you pay for that listing in the Yellow Pages or does the Gates Company pay for that? A. Well, the Gates Company.

Q. Entirely? A. Yes.

Q. Now, you handle these Firestone Tires. Will you tell us why you handle them? A. Well, I think they are a good tire. I like the tire and they are nationally advertised; and I have a (5232) highway station, and tourists come through. There is a demand for them. Your Gates tire is local.

Q. You mean among your transients, your transient customers, you find it easier to sell them Firestone? A. Yes, easier.

Q. So you think it is an asset to have the Firestone tire. A. I do.

Gordon B. Patterson, for Respondents—Direct

Q. And to have such advertising signs of Firestone that you do have. A. Yes, sir.

Q. Do you attend dealer meetings of the Texas Company? A. I do, yes.

Q. In general, is the Texas Company of any assistance to you in marketing your TBA products? A. Yes, they have been a great help.

Q. What do they do for you? A. They show you how to merchandise, how to make displays. They are a good deal of help. They help you sell.

Q. Does that help apply as well to your TBA merchandise which is not Firestone and Goodrich as it does to Firestone and Goodrich? A. Oh, yes.

Q. You find it helpful for both. A. Helpful for both of them.

(5233) Q. At these dealer meetings, has any representative of the Texas Company ever made any threats about lease cancellations or any other bad kind of treatment if dealers did not handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Has any dealer ever complained to you that such threats have been made to him? A. No, sir.

Q. Will you tell me whether there is any necessary relationship between the inventory, the amount of inventory which a dealer carries, and the amount of sales? A. No, there isn't.

Q. You mean you may have a large inventory and— A. And not sell very much.

Q. And you may have a small inventory with a fast turnover and have more sales, is that right? A. That's true.

Q. And is that particularly true when you compare inventories of tires to accessories? A. I think so, yes.

Gordon B. Patterson, for Respondents—Cross

Q. Would you say that there is a shortage of good filling station operators in Denver, as compared to the number of stations that are available? A. Yes, I suppose there is.

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(5234) *Cross-examination by Mr. Dias:*

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Q. Is that out of the city proper, away from it? A. It is right at the edge of town.

Q. Did you say you were in the station three years? A. Yes, sir.

Q. Had you had any prior experience in the station operating business? A. No, sir.

Q. Was it a brand new station when you took it over? A. No.

Q. Can you tell us the brand of TBA that was in the station when you took over? A. Well, it is probably about the same brands that I am handling now. They were handling Gates Tires at the time.

(5235) Q. They were. Incidentally, did you say that Gates is a local tire? A. Yes. The tire is made in town.

Q. It is made in Denver? A. Yes.

Q. I see. Did you state that the Standard Firestone Distributor—what is his full name, please? A. Well, it is the Standard Tire Company.

Q. Standard Tire. Where are they located? A. 141 South Broadway.

Q. Do they also sell batteries and accessories? A. Yes, sir.

Q. And where are they in relationship to your station? A. You mean distance?

Q. Yes. A. Oh, they are quite a way, I suppose. Five or six miles, perhaps.

Gordon B. Patterson, for Respondents—Cross

Q. Have you ever purchased any batteries from Standard? A. No, sir, I haven't.

Q. None at all? A. No.

Q. Where is Grant located? A. They are located closer. They's close.

Q. Whereabout? A. Two blocks.

(5236) Q. And these other suppliers—Auto Equipment—? A. They are downtown. About as far as Standard.

Q. Do they have better service than Standard? A. Not necessarily. They all have good service.

Q. I take it that there are quite a number of stations in Denver, gasoline stations. A. Yes.

Q. What is the leading brand of gas in Denver? A. Continental; Conoco. Texas.

Q. After that? A. Texas Company.

Q. How does Phillips 66 rank? A. I believe fourth. Standard is third.

Q. Are you familiar with any of the rest of the Texaco stations? A. Oh, not too much. I know some of them. There is a lot of them.

Q. How many would you say there are in town? A. Golly, I don't know. I wouldn't know that.

Q. Well, you are not familiar with them at all, is that it? A. Well, not too much, no.

Q. Aren't you in the directory, listed under Firestone Tires, too? A. Yes, sir. I think so. I am.

(5237) Q. Do you pay for that? A. I think I pay something on that, yes.

Q. How often do you attend those dealer meetings? A. Not as often as I would like to; but I do attend some of them.

Q. How many are there during a year that you know about? A. I know about all of them. But I don't get to attend all of them.

Gordon B. Patterson, for Respondents—Cross

Q. How many are there? A. I don't know. We have our big meeting in the Spring of the year, and they have them occasionally. I don't know that it is regular.

Q. In the three years that you have been attending these meetings, how many would you say you have attended? A. Oh, I have probably attended four or five.

Q. Can you tell us how many Firestone Tires you have in stock right now? A. Oh, I would think probably fifty or sixty.

Q. Do you have the same number of Gates? A. No. I have about a dozen.

Q. And in the course of a year's time, how many Firestone do you sell? A. Well, it would have been—this would have to be a guess: I sell approximately a thousand dollars worth (5238) of tires a month.

Q. In tires alone? A. In tires.

Q. Does that include Gates? A. That includes them all, yes, sir.

Q. And how much of that would be Gates, and how much Firestone? Can you give us some idea? A. Oh, I suppose that it would probably be eighty per cent Firestone.

Q. Can you give us some idea of the volume of your sales of batteries and accessories per month? A. I suppose it runs around \$1,200, \$1,300 on batteries and accessories.

Q. Batteries and accessories? A. Yes.

Q. This 50,000 monthly gallonage—does that come about due to the peak season right now? A. Last year my average gallonage was 55,000.

Q. For the year? A. Yes.

Q. And this year it is down a little bit. A. I think it is off just a little. I think last month I pumped 4,000.

Gordon B. Patterson, for Respondents—Redirect

Arvid F. Tubbs, for Respondents—Direct

(5239) *Redirect examination by Mr. Lorenzen:*

Q. On this tire sale, you say you sell your tires about eighty per cent Firestone and twenty per cent Gates? A. Yes.

Q. Is that about the way the demand is for the tires?

A. It seems to be now, yes.

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(5240) ARVID F. TUBBS was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and your home address to the reporter, please? A. Arvid F. Tubbs, 204 East Main, Marshall, Minnesota.

Q. What business are you in? A. I am a Texaco station operator.

Q. Do you sell Texaco gasoline? A. Yes, sir.

Q. And do you lease your station? A. Yes, I do.

Q. From Texas Company? A. From Texas Company.

Q. Where is that station located? A. It is 101 East Main, Marshall, Minnesota.

Q. For how long have you been a lessee of the Texas Company? A. Of the company itself since '54—four years.

Q. And before that there was a distributor that owned that station? A. Yes, sir; and leased from him from '52 to '54.

Q. Do you handle TBA at that station? A. Yes, sir.

(5241) Q. Will you tell us why you handle it? A. Well, it's for the money; and it helps out on the gas sales, and the gas in turn helps out with your TBA. And the customers are just more satisfied all the way.

Arvid F. Tubbs, for Respondents—Direct

Q. Do you find it satisfies your customers? A. Yes, satisfying their demands.

Q. The customers like it and you make money? A. Yes.

Q. About what is the gallonage of your station? A. It will average right—12,000 a year, right within a few hundred either way.

Q. You mean— A. A month.

Q. All year round, per month? A. Per month. A year round average.

Q. Now, during the time that you have been a Texaco dealer, and particularly since you have been a lessee of the Texas Company, have you had any understanding as to what the Texas Company's TBA policy and program is? A. Yes, sir.

Q. And what do you think it is? A. They recommended us to handle Firestone or Goodrich tires and TBA, but we could handle anything that we wanted to as long as it was a good product.

Q. And have you handled anything you wanted to? (5242) A. More than anything.

Q. And you have handled all kinds of brands that we may not even know too much about down here? A. Yes; that's right.

Q. Has anyone from the Texas Company ever told you that your lease would be cancelled or not renewed if you didn't handle the sponsored line? A. No, sir. They never have.

Q. Has anybody told you that the company would treat you badly in any way if you didn't handle the sponsored line? A. No, sir. They never have.

Q. In your opinion, are the brands of TBA which you handle of the type which have good acceptance in your community and your neighborhood? A. Yes. I handle most generally national brands of everything so you just name the brand and they want it.

Arvid F. Tubbs, for Respondents—Direct

Q. And the particular type you handle has good acceptance in your community? A. Yes. In our community it is strictly up to me. All the recommendations I make, if it's good—

Q. You mean your customers will follow your recommendations? A. Yes.

Q. Now, tell me, among your customers how many are from your own community and how many are transients that come through the place? (5243) A. I'd say at least 90% are local and about 10% are transient.

Q. And you know those local ones? A. Yes.

Q. And they rely on your judgment? A. Yes.

Q. What tire do you recommend to them? A. It depends on the type of driving and the abuse they give the tires. And most generally, if they come in and just want a tire I will try and sell them the one I make the most money on. But if they come in and want a Goodrich or Firestone, I will get them that.

Q. What is the tire you recommend to them that you can make the most money on? A. Gates. Gates and Goodyear.

Q. Those are the two you make the most money on? A. Yes.

Q. And are most of your sales in those two lines? A. Yes.

Q. What percent of your sales are in those two lines? A. I would say at least 85%.

Q. Do you stock any tires? A. Yes, sir.

Q. And how many Goodyear tires have you got in stock right now? (5244) A. Oh, I only have about four to six right in there.

Q. Of the Goodyears? A. Yes.

Q. And how many Gates? A. About fifteen.

Q. Do you happen to have any other tires there right now? A. I think there is four Firestones. And that is all.

Arvid F. Tubbs, for Respondents—Direct

Q. That is all? A. Yes.

Q. And that's it? A. Yes.

Q. Do you sell many Firestone tires? A. Not too many. Just whenever the public demands.

Q. That is, you have those more or less on a pickup basis? A. Yes. And adjustments—returns I got back for adjustment.

Q. Of all of the tires that you sell, how many do you sell out of inventory and how many do you sell on a pickup basis? A. Oh, about 80 to 85% on pickup, and the difference on inventory.

Q. And of those pickups you say that around—what did you say, 80 to 85% are Goodyear and Gates? A. Yes.

Q. And the balance are Firestone and all other makes? A. Yes; that's right.

(5245) Q. Now, how about your batteries? What kind do you handle? A. Grant mostly, and some Auto-Lite and Exide.

Q. Do you stock any batteries? A. No, I don't. The supplier is right next door. I can get them all any time.

Q. So you pick up all your batteries? A. I pick up the batteries. The Grant distributor and Goodyear are the same man.

Q. But the ones that you sell are all either Grant, or Auto-Lite, or Exide? A. Yes.

Q. Now, how about your accessories—not counting now your tires and batteries. From whom do you buy your accessories? A. The biggest majority from Arnold Motors, right in Marshall.

Q. That is not a Firestone or Goodrich supply house? A. No. That is an independent supply house.

Q. How about Redwood Motors? A. Yes, I get quite a few from there, and tires from there.

Q. Do you buy your Gates tires— A. Gates tires and fan belts through Redwood Motors.

Arvid F. Tubbs, for Respondents—Direct

Q. And what is this D. G.— A. D. L. Milney. That's another wholesale house there. (5246) I buy, oh, probably 10% of my accessories.

Q. And Marshall Tire Service? A. That is the Good-year distributor and Grant battery distributor.

Q. Then, except for your pickup of tires you don't buy anything from Firestone, is that right? A. That's right. Just tires alone from them.

Q. Just tires and what? A. Just tires alone.

Q. And you don't buy any B. F. Goodrich merchandise? A. No. I just pick up tires occasionally, possibly two to four a year is all.

Q. Do you openly display all of your TBA? A. Yes.

Q. You don't hide any of it? A. Not a thing.

Q. Anybody from the Texas Company ever tell you that you had to hide it? A. No, sir.

Q. That they would treat you badly in any way if you didn't stop the display of this merchandise? A. No, sir; never did.

Q. You say that about 90% of your customers are local? A. Yes.

Q. From your immediate vicinity? (5247) A. Just from within a 30-mile radius.

Q. Do you know them all pretty much personally? A. Yes; by name.

Q. And they rely on your judgment both with respect to tires and batteries? A. Yes.

Q. When did you take over this station? Eight years ago? A. May 20, 1950. That is eight years—a little over eight years.

Q. Now, what kind of TBA did you have when you opened it, after you took it over? A. I'd—well, a few Good-year tires, and a few of their Grant batteries for the opening; and otherwise there wasn't much in the accessory line.

Arvid F. Tubbs, for Respondents—Direct

A few mirrors, and stuff like that; spark plugs, and that type of accessories.

Q. You took it over just that way? A. Yes, sir.

Q. And have you handled substantially the same type of merchandise that you handle now the whole eight years?

A. Yes. Very much.

Q. In the course of that time has the Texas Company remodeled your station? A. Yes, they have. Well, no—the owner did it the year before, a year or two before the company took over the lease. And then the company did put in new lighting in the lube rooms.

(5248) Q. Since you have leased from them? A. Yes. They did all that. And they put some shelving—rebuilt some shelving in the back office, we call that.

Q. Do you feel they have treated you badly in any way because you have handled the TBA which is not in the Goodrich or Firestone line? A. No, sir. Not at all.

Q. When you say "the previous owner," did you mean this distributor from whom you leased originally? A. Yes; that's right.

Q. Does the Gates Tire Company, by the way, have a credit plan of its own? A. Yes they do, sir.

Q. And they will let you honor—is that the plan that lets you honor any oil company credit card? A. It is more or less up to our recommendation; but if the customer has a credit card it is our risk.

They will accept that credit rating, and as soon as the customer makes the first payment on those tires we get our money for them.

Q. Are those first payments generally made? A. Yes. Very much so.

Q. Do you get any help from the Texas Company in merchandising your TBA? A. Yes; very much so.

Arvid F. Tubbs, for Respondents—Direct

(5249) Q. What sort of help? A. In your dealer meetings. And then, when the field men come around they will give different suggestions and help you out with different setups, and explain different stuff, along with this Texaco Dealer Magazine we get. It is all very good.

Q. And those field men will help you sell the type of TBA you do sell? A. They will help us set up and display, and explain everything. They will.

Q. You said you went to some dealer meetings. For how long have you been attending those? A. Oh, off and on for the full eight years.

Q. Do you get acquainted with the dealers who attend those meetings? A. Yes. I know the whole works.

Q. About how many are there? A. I would say in the neighborhood of forty—a few more or less.

Q. Who attend your meetings? A. Yes, sir.

Q. Have you ever heard any representative of the Texas Company threaten you or the dealers generally at these meetings with lease cancellation or any other mean conduct if they didn't handle the sponsored line of TBA, or some of it? (5250) A. No, sir, I never have.

Q. And have any of those forty dealers whom you say you are well acquainted with ever told you that any threats had been made to them with reference to their TBA purchases? A. No, sir; never have.

Q. Nothing like that has ever happened? A. No, sir. Never.

Q. I don't know if it is really much use asking you this, but what is the percent of your total TBA which you buy from either Firestone or Goodrich? A. About two—about two per cent.

Mr. Lorenzen: I would like to add to the photographic gallery. Would you mark this for identification as Exhibit 62?

Arvid F. Tubbs, for Respondents—Cross

(The photograph referred to was marked Respondent's Exhibit 62 for identification.)

By Mr. Lorenzen:

Q. I show you Respondent's Exhibit 62 and ask you whether that is a photograph of your station. A. Yes, sir, it is.

Q. Are those window valances Goodyear valances? A. Yes, they are.

Q. Do you have any Firestone or Goodrich advertising about that station at all? A. I don't have a bit.

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(5251) *Cross examination by Mr. Dias:*

Q. I only noticed one pump on that picture. You have two at least, don't you? A. Two.

Q. Is your station located at the commercial end of town? A. One block—well, yes, right on the end of the commercial street.

Q. And what is the size of Marshall? A. It is approximately 6,300.

Q. You mentioned that 90% of your customers are local, and that they come to you from a radius of thirty miles. How many Texaco stations are in town? A. Just mine.

Q. Yours is the only one? A. Yes.

Q. Are there any other gas stations nearby? A. No. No large—mine is the biggest one within about thirty miles. I mean, there is one in Lynd, seven miles away. That is just a pump in front of a—

(5252) Q. That is a Texaco station? A. It is just a Texaco pump.

Q. I didn't make myself clear. Are there any other stations in your town? A. Other stations, yes, but no more Texacos.

Arvid F. Tubbs, for Respondents—Cross

Q. Are they located anywhere near your station? A. Oh, yes. Well, there is sixteen of them altogether, all within about seven blocks.

Q. You are sort of surrounded by them? A. Yes.

Q. Do any of those stations carry Firestone? A. I don't believe there is any stations that carry Firestone.

Q. Or Goodrich? A. There is one Goodrich. The Goodrich is a Mobile 24-hour station.

Q. And there are no Firestone stations there? A. There is a Firestone distributor, but he isn't in a station. He is a Firestone store. Everything.

Q. Does he sell gasoline too? A. No, he doesn't.

Q. Where do you draw the dealers for these meetings that you have attended for the last eight years? A. They come from a radius of, oh, it runs—there must be about a 70-mile radius, roughly. It is where they all (5253) meet. And it will be the dealers plus their helpers. All helpers are invited too. And all the dealers try to bring their help along.

Q. Are they run pretty late at night after the station is closed? A. Most of the time they get an extra person to take care of the station.

Q. How often are those meetings held, do you know? A. Oh, every three or four months, I believe.

Q. Have you attended all or most of them? A. No. I'd say two or three.

Q. At these meetings are there ever any rubber company representatives describing their products? A. No. I have really never had them where they get up and really make a call. They will have their tires on display, and the representative will be there; but at the same time, he doesn't go up and talk and explain different stuff. We have been invited to the Firestone showing, and the Goodyear showing, and Gates showing, and that is the only time we

Raymond Holm, for Respondents—Direct

ever have anything to do with the tire companies. The representatives are all at our meetings, but they never say much. We just know they are there.

. . .

(5254) RAYMOND HOLM was thereupon called as a witness for the Respondent and, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and your home address to the reporter? A. Raymond Holm, 311 Center, Mankato, Minnesota.

Q. How far is this Mankato from Marshall? A. About 110 miles, I would say.

Q. Do you attend the same meetings as Mr. Tubbs, or different ones? A. Different ones.

Q. You are in the service station business. A. That's right.

Q. You sell Texaco gasoline? A. That's right.

Q. And do you lease from the Texas Company? A. That's right, yes.

Q. Do you handle any TBA? A. Yes.

Q. Will you tell us why you handle it? A. Well, to attract business, naturally. Gasoline and (5255) TBA go together like, I guess, ham and eggs, you might say. Gasoline will bring people in for TBA, and TBA will bring people in for gasoline. They work hand in hand. Today it is no more a filling station; you have got to be able to do a little bit of everything, and have a little bit of everything, just like your super markets. That is the way your service stations have become.

Q. How long have you been a lessee? A. Seven years.

Q. During the time you have been a lessee, have you had an understanding as to the Texas Company's TBA

Raymond Holm, for Respondents—Direct

program and policy? A. Yes. When I was going through the interview, being interviewed for the service station, the zone manager for Texas Company outlined the TBA program and everything else pretty distinctly. He recommended that we could handle Firestone or Goodrich, but that we would feel free at any time to handle anything we wanted, that we were a completely independent businessman, that we could do pretty much anything we wanted.

Q. Did you act on that statement of policy? A. I am afraid so.

Q. You have, in fact, bought a good deal of TBA which has nothing to do with Firestone or Goodrich, have you not? (5256) A. That's very true.

Q. In fact, nearly all of your TBA is in some other lines. A. That's right.

Q. Has anyone since that original talk that you had with this manager ever said to you that in fact the Texas Company did not mean this statement about your independence and that you had to buy Firestone and Goodrich? A. I don't have to do anything; just be there, keep it open, and buy their gasoline—and that's it.

Q. And nobody has told you that you had to buy Firestone or Goodrich? A. No.

Q. And nobody has told you that your lease would be cancelled if you did not do it? A. Never.

Q. Nothing like that has ever happened. A. No.

Q. Will you tell us from whom you buy your TBA? A. The Kaye Corporation.

Q. What do you buy from them? A. Tires, fan belts, and various other TBA they got. They are a real large outfit; they got a lot of TBA. Batteries—

(5257) Q. What kind of tires? A. Armstrong.

Q. Are those your principal line of tire? A. Yes. Mainly.

Raymond Holm, for Respondents—Direct

Q. About how many of those do you have in stock? A. About fifty.

Q. Do you stock any other tires? A. Yes.

Q. What are they? A. Kelly-Springfield, and U. S. Royal.

Q. How many Kellys do you have in stock? A. About thirty.

Q. And how many U. S. Royal? A. Twenty or twenty-five, approximately.

Q. Are those your principal lines? A. Yes.

Q. Do you happen to have anything else in stock? A. Yes. I have got two Goodrich.

Q. Two Goodrich tires? A. Yes.

Q. How did you happen to get those? A. Well, I got those through adjustments. Otherwise I probably wouldn't have them.

Q. Do you display all of your tires openly? A. Yes.

Q. Do you have signs for the Armstrong tire? (5258)
A. Yes. All your major oil companies or tire companies will put out advertising programs. You know what I mean. Certain periods of the year: 4th of July, Labor Day, sales, and fire sales, and everything else; and whenever they come out with them, which is about five or six times a year, we put them up right away.

Q. That is Armstrong? A. Armstrong, yes; and—

Q. And Kelly? A. Kelly.

Q. How about Royal? A. Not too much Royal.

Q. How about Goodrich? A. None.

Q. You put none on. A. I get it, but I don't put it up.

Q. Well, don't you have a weatherbeaten old Goodrich decal up there in your station? A. Yes; that's been there. I don't want to take it off; it is too much work. So I just leave it.

Raymond Holm, for Respondents—Direct

Q. Do you think it helps you get any customers? A. Oh, I think it don't hurt anything. We get very little transient business, and if a person, a local, or a transient, needs an adjustment, they see the B. F. Goodrich decal and stop, and they ask me if I handle the Goodrich. I tell them I don't handle it, but I (5259) can see what I can do for them, and I do what I can about getting it.

Q. Then you do— A. I will get it and adjust it, and take it down for him.

Q. And you do make money on that sale. A. I hope so.

Q. You do have this other outdoor or window advertising of these Armstrong and Kelly-Springfield tires that you have testified about. A. Yes.

Q. And that is in your station all the time. A. Yes. It is there all the time—most of the time. I mean one day—you don't leave it up from one day to the next. You take it out for a little while so that somebody can tell that there is a change. Otherwise, they see the same stuff, so they never know you change it.

Q. You change your windows, just like stores change their windows, their displays, once in a while, is that right? A. That's right.

Q. Do you participate in any newspaper advertising with any of the tire distributors whose tires you handle? A. Yes. We have a coop advertising program with Armstrong (5260) on our newspaper and radio.

Q. To what extent do you participate in that? A. Well, we still do a little of it, but we used to be on the basketball games and football games and baseball games. That was on two radio stations. With Armstrong.

Q. That was sponsored by Armstrong? A. By Armstrong and myself.

Q. How about newspapers? A. That was also Armstrong and myself, too.

Raymond Holm, for Respondents—Direct

Q. That was sponsored by you jointly and your name appeared on it. A. My name appeared on it, yes; on the bottom.

Q. Of course your name appeared in this radio advertising, did it not? A. Oh, definitely.

Q. And this has been going on for how long a time? A. About five years.

Q. What station was this advertising on? A. Radio Station KTUE and Station KWSM—both Mankato.

Q. And do you want to give us the name of the newspaper in which this advertising took place? A. The Mankato Free Press.

Q. Is that a daily? A. That is a daily, yes.

(5261) Q. Now, in addition to that, have you done any handbill advertising? A. Yes, with Armstrong Tire and Grant batteries. We have put out handbills, circulars, you know. We had the kids put them around on windowshields, and stuff like that, until the local police—there is an ordinance against it, so they pretty well made us quit.

Q. So then you couldn't give out any more handbills. A. That's right.

Q. Tell me something: do you remember when you opened this station; did you open it with this line of tires that you now have? A. No; I opened with Goodrich, and that was a financial reason, because they would put them in on consignment and if I sold one I would pay for it; and if I didn't sell one, it didn't cost me anything. So at least I had them.

Q. So when you opened this station, you didn't have too much money, did you? A. That's right.

Q. And you had to take a deal where you could get your TBA on consignment? A. That's right.

Q. And the B. F. Goodrich people offered to put it in without charge, is that right? (5262) A. Without charge; right.

Raymond Holm, for Respondents—Direct

Q. What battery did you open with? A. Delco.

Q. Was that Delco Battery put in on the same basis?

A. Yes.

Q. How long was it after you got on your feet that you changed and bought these other tires? A. I would say about a year. Eight months to a year.

Q. As soon as you were financially able? A. That's right.

Q. And then you changed to these other tires, to Armstrong, right? A. To Armstrong, yes.

Q. And now you pay for your own inventory. A. That's right.

Q. Isn't that Goodrich dealer a little unhappy about that? A. That's tough.

Q. Does he still try to sell you? A. He is there every week.

Q. And he hasn't had any success. A. He is a tough one. He can't seem to take no for an answer.

Q. From whom do you buy most of your accessories?

A. Mostly the Kaye Corporation and Bowes Sealfast.

(5263) Q. You buy substantially all of your accessories from Bowes Seal Fast, is that right? A. That's right.

Q. Do you buy anything from Goodrich? A. Nothing.

Q. Any Firestone? A. Nothing.

Q. So anything you get from Goodrich or Firestone is just a pickup basis in tires. A. For anyone who wants them, I will get them for them. Yes.

Q. Everything else is from a source other than Firestone and Goodrich, is that right? A. Yes.

Q. Do you display all of your TBA openly? A. Every bit of it.

Q. Has the Texaco Company ever told you that they would cancel your lease or otherwise treat you badly if

Raymond Holm, for Respondents—Direct

you did not stop this newspaper advertising or radio advertising or the display of your non-sponsored merchandise? A. No. In fact, they were always for it.

Q. They were always for it? A. Yes. It was helping the gallonage—all this advertising was.

(5264) Q. What happened? A. He didn't want to condemn; he wanted to continue. Even if it was something else.

Q. They were happy with it? A. Very happy.

Q. Did you get any help from the Texas Company in your merchandising, in merchandising your TBA? A. Yes.

Q. What sort of help did you get? A. Oh, training programs, selling aids, and hints as far as merchandising and display and selling—how to sell, how to close a sale, and anything on that order. Me and the fellows who worked for me got this.

Q. And that applied, of course, to the non-sponsored TBA? A. To the non-sponsored TBA, too.

Q. Because that is all you are handling. A. That's all I'm handling, yes.

Q. You did attend dealer meetings, did you not? A. Oh, yes.

Q. About how many of the Texaco dealers around you do you think attended those meetings? A. Well, there is about forty-five or fifty dealers, and I imagine about thirty showed up.

Q. Each time? (5265) A. Each time, yes.

Q. How many meetings did you attend? A. Just about all of them.

Q. And in the course of that time did you meet more or less all of the dealers? A. I met, I think, just about every one of them.

Q. What is your division point, by the way? A. Minneapolis, I believe.

Raymond Holm, for Respondents—Cross

Q. The Texaco Division Point is Minneapolis? A. I believe so. Isn't it Ray?

Q. At these meetings, has any representative of the Texas Company ever threatened you or the dealers there generally? A. No.

Q. They have not threatened you or them with cancellation of lease or with any other unfriendly conduct if they did not handle the Firestone or Goodrich line, or some of it. A. Never a word was said on it. Never said a word.

Q. Did you get pretty well acquainted with these dealers after the meetings? A. We always used to sit around and have a kind of a bull session, yes.

Q. Did you talk together? A. Yes.

(5266) Q. Did any of those dealers ever complain to you that The Texas Company was in any way threatening them if they didn't handle the sponsored line of TBA? A. They never threatened at all.

Q. By the way, do you know what some of those other Texaco dealers around you handled in the way of TBA? A. Well, I think everybody just like myself. There isn't hardly any of them that go along there with the program.

Q. You mean practically no one handles Firestone or Goodrich? A. I don't think anyone handles it 100 per cent.

(5267) Q. Do a lot of them handle the type of tires and TBA that you handle? A. Just about every one of them.

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Cross examination by Mr. Dias:

Q. How often do you visit those other Texaco stations in town? A. Oh, we are pretty close. I think I am in one or two or three of them every week.

Q. Do you distribute; are you a distributor? A. No.

Q. How many Texaco stations are in Mankato? A. Six.

Colley Burnett, for Respondents—Direct

Q. How many of them lease their stations the same as you do, do you know? A. I believe four.

Q. Four out of six? A. Four out of six are under a third-party lease.

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(5268) Q. Do the other stations, then, handle only those Firestone and Goodrich that are turned in to them for adjustment purposes? A. Oh, no. I don't know what they do. As far as the tires they have are concerned, I don't ask them if they got that tire through an adjustment.

Q. Do any of those other stations carry some Goodrich and Firestone? A. Oh, I suppose some of them do. I haven't seen any of them around.

Q. You have been in each and every one of the stations? A. Just about. They have Gates, Mansfield, Remington, and Armstrong, to name a few.

Q. How large a town is Mankato? A. About 30,000. That is with North Mankato and Mankato, combined.

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(5269) COLLEY BURNETT, called as a witness on behalf of the Respondents, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name to the reporter? A. Colley Burnett.

Q. We are getting a little closer to the Atlantic seaboard, aren't we, Mr. Burnett? A. Yes.

Q. Where do you live? A. Geneva, New York.

Q. Is that your home address? A. Lochland, in Geneva, New York.

Q. What is your business? A. At 43 Lake Street, Geneva, New York.

Colley Burnett, for Respondents—Direct

Q. And what sort of business do you have? A. I am a Texaco dealer.

Q. Do you sell Texaco gasoline? A. Yes, sir.

(5270) Q. And do you lease from the Texas Company? A. Yes, sir.

Q. How long have you been a lessee and Texaco dealer at that location in Geneva? A. 18 years.

Q. Approximately what is the gallonage of your station? A. Monthly?

Q. On the average, yes? A. I will average about 29,000.

Q. Is Geneva located on any highway? A. It is located on 5 and 20,—U. S. 20.

Q. Is your station near U. S. 20? A. Just off of the by-pass.

Q. Do you handle TBA at your station? A. Yes, sir.

Q. Will you tell us why you handle it? A. Well, TBA more or less makes a one-stop service; it helps your sales of gasoline and oil, and, in turn, your gasoline sales help the TBA sales.

Q. You handle TBA because you want to,—it is your choice? A. That is right.

Q. And you think it helps you in your business? A. Yes, sir.

Q. Have you had any understanding and do you have an (5271) understanding of the Texaco's TBA policy and program? A. Yes, sir.

Q. Will you tell us what that understanding is? A. Well, the Texas Company recommends Goodrich or Firestone, but you can handle any brand that you desire.

Q. Have you acted on that understanding? A. Yes, sir.

Q. And your TBA purchases have been made on that basis? A. Yes, sir.

Q. Has anyone from the Texas Company ever told you that the Texas Company would cancel your lease or other-

Colley Burnett, for Respondents—Direct

wise treat you badly in any way if you didn't handle all or some of the sponsored TBA line? A. No, sir.

Q. Nothing like that has ever happened? A. No, sir.

Q. Will you tell us from whom you buy your TBA?

A. Goodyear Tire and Rubber, Delco batteries, B. F. Goodrich.

Q. Do you buy anything now from Chapin-Owen? A. Some; I buy Delco batteries, all accessories,—polishes, oil filters, and so forth.

Q. Chapin-Owen is not the Goodrich or Firestone supplier in your neighborhood, are they? A. No.

(5272) Q. So you buy substantially all your accessories from a house which is not connected with Firestone or Goodrich? A. Yes.

Q. From whom do you buy your Goodyear tires? A. Goodyear Tire and Rubber Company, in Buffalo.

Q. You say you buy your Delco batteries from Chapin-Owen? A. Yes.

Q. Are those your principal suppliers? A. Yes.

Q. You say you handle the Delco battery; is that the only one you stock? A. Yes, sir.

Q. How about tires; what do you stock? A. Goodrich and Goodyear.

Q. Will you tell me how many Goodrich tires you have in stock now? A. Probably ten or twelve.

Q. And how many Goodyear do you have in stock? A. About 150.

Q. About how many of your sales of tires are out of stock and how many are on a pickup basis? A. I would say right now the pickup basis would run about 75 percent.

Q. So only about 25 percent is out of stock? (5273) A. Yes, sir.

Q. When you pick up, do you pick up whatever tire the customer wants so that you are able to sell it to him? A. Yes.

Q. No matter what make? A. Yes.

Colley Burnett, for Respondents—Direct

Q: You pick up more Goodrich now than you do Goodyear? A. Yes.

Q. That is because you have a large stock of Goodyear and only a small stock of Goodrich? A. That is right, sir.

Q. And you do sell more Goodrich tires than that difference in inventory would indicate? A. Yes.

Q. My friends here have been kind of touchy about this Goodrich situation and I just want to bring out you sell quite a few Goodrich tires, don't you? A. Yes.

Q. You find there is some sort of popular demand for them in your neighborhood? A. Yes.

Q. And they are a successful line of tire? A. Yes.

Q. At one time did you try some other tires in addition to Goodrich and Goodyear? (5274) A. I have had some Vanderbilts.

Q. How did those go? A. It is pretty much of a selling job to get rid of them. There is not much public acceptance.

Q. And you found out those were not satisfactory? A. That is right.

Q. So you gave up those, did you? A. Yes, sir.

Q. And do you display your Goodyear tires? A. Yes, sir.

Q. And your Delco batteries? A. Yes.

Q. They are all openly displayed? A. Yes, sir.

Q. Have you got signs? A. Yes, sir.

Q. For both the Delco and the Goodyear? A. Yes.

Q. Do you have any Goodrich decals in your station? A. No.

Q. Do you have any Goodrich signs? A. I have a Goodrich metal sign on the outside of the station.

Mr. Lorenzen: May I have these marked Respondent's Exhibits 63-A and 63-B?

(5275) (The photographs referred to were marked Respondent's Exhibits 63-A and 63-B, for identification.)

Colley Burnett, for Respondents—Direct

By Mr. Lorenzen:

Q. Mr. Burnett, do these two pictures, Exhibits 63-A and 63-B, respectively, show the outside of your station and the display of Delco batteries inside the station (handing photographs to the witness)? A. Yes, sir.

Mr. Lorenzen: May I add this picture as Respondent's Exhibits 63-C?

(The photograph referred to above was marked Respondent's Exhibit 63-C, for identification.)

By Mr. Lorenzen:

Q. And is Respondent's Exhibit 63-C another picture of the inside of your station, showing your accessories, including your Goodyear tubes? A. Yes.

Q. Are those Goodyear tubes in boxes marked "Goodyear"? A. They sure are.

Q. On Respondent's Exhibit 63-A, the outside of your station, I see a Goodyear sign in your window? A. Yes.

Q. Is that a good-sized sign? A. Well, that window is, I would say, about five feet in size.

(5276) Q. The sign half fills it? A. The sign must be 2½ feet.

Q. How about the Goodyear sign on the tires down at the left of the picture; is that a substantial picture also?

A. This is just a regular tire holder, yes, sir. It is possibly a foot.

Q. And you have a large Goodyear sign over the tire? A. No, the tire fits into that; that is a carrier.

Q. Was any special preparation made when those pictures were taken? A. No, sir.

Q. That is just the way the station looked when the pictures— A. At the time the pictures were taken, yes, sir.

Colley Burnett, for Respondents—Direct

Q. And would you say that in the ordinary course of your business the station looks substantially as shown in these pictures, Respondent's Exhibits 63-A, -B and -C?

A. Yes, sir.

Q. Now, you do make some changes from time to time, don't you? A. Well, you have to change things around in a different location like that.

Q. Tell us what changes you would be apt to make which would be different from the picture? A. Well, not so much inside as outside. The next time (5277) you come, you might have these tires over in place of these stands over on the inside of the door.

Q. You mean the Goodyear tires and the Goodyear sign might be over to another place, over to the left perhaps?

A. Yes, or they might be out here on the pump islands, in the front.

Q. Do you keep Goodyear identification of substantially that type on your station or in front of your station all the time? A. Yes.

Q. Do you keep this Delco sign inside your station?

A. That is a regular rack. That is a battery rack; that is always there.

Q. And the Delco batteries with the display is regularly displayed on that stand? A. Yes.

Q. And you have your stock of Goodyear tubes in your station as shown on Respondent's Exhibit 63-C? A. Yes.

(5278) Q. Are you under one of these standard form leases which renews itself at the end of each year unless it is cancelled on ten days' notice? A. Yes.

Q. That is the type of lease you have now? A. That is right, yes, sir.

Q. And have had for years? A. Yes.

Colley Burnett, for Respondents—Direct

Q. Has any threat been made to you to cancel your lease or not renew it, if you didn't stop handling this competing merchandise; that is, I mean competing with Firestone and Goodrich, and stop advertising this merchandise? (5279) A. No, sir.

Q. No threat like that has been made to you? A. No, sir.

Q. Do you feel free to handle any TBA you want? A. Yes, sir.

Q. If your business judgment dictated a discontinuance of any Goodrich product, would you feel free to do so? A. Yes, sir.

Q. Can you give me an estimate of about what percent of your total TBA sales are in accessories as distinguished from batteries and tires? A. I believe accessories are about 40 percent.

Q. And what about tires and batteries? A. That would include your other 60 percent, then, — just accessories, tires and batteries.

Q. 60 percent would be tires, tubes and batteries, together? A. Yes.

Q. Have you any idea of what the relationship is as between those two classes, — tires and tubes, on the one hand, and batteries on the other? A. I would say batteries 15 to 20 percent.

Q. And the balance in tires? A. Yes.

Q. And what is the total amount of your TBA that you (5280) estimate you buy from the B. F. Goodrich supplier? A. I think as to tires I buy 50 percent, I think it runs about 50-50.

Q. The total TBA would be 20 percent you buy from Goodrich and the other 80 percent you buy from the other suppliers, taking all your TBA together? A. It would be about 40 percent, wouldn't it, — 40 percent Goodyear—

Colley Burnett, for Respondents—Direct

Q. You told us, I think, that all of your accessories and all of your batteries are from a source other than Goodrich? A. That is right.

Q. And that leaves 40 percent which is bought from both Goodrich and Goodyear, and other tire companies?

A. That would be about 20 percent from Goodrich.

Q. And you said about half of that was from Goodrich and half from Goodyear? A. Yes; I wasn't figuring accessories.

Q. And 20 percent you buy from Goodrich and that 80 percent would be those you buy from others than Goodrich?

A. That is right.

Q. And you buy nothing from Firestone? A. Firestone is right across the street. I can walk over there if somebody demands a Firestone tire.

Q. Sell them on a pickup basis? (5281) A. Yes.

Q. Do you think it is better business for you to handle the Goodrich tire than the Firestone tire? A. Yes, sir.

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Q. Does the Texas Company give you any assistance in the merchandising of TBA? A. Yes, we have dealer meetings and also there is a Texaco dealer magazine and things like that.

Q. Do you find that whatever suggestions you get from those sources are helpful in the selling of your TBA? A. Very helpful.

Q. No matter whether it is the Goodrich or some other kind? A. That is right.

Q. About how many dealers would you say attend these dealer meetings, on the average? A. I would say there are generally 30.

Q. Are they different ones, not always the same ones? A. Generally the same ones, as a rule.

Colley Burnett, for Respondents—Direct

Q. Have you had a chance to get acquainted with them a little bit? A. Pretty much.

(5282) Q. In the course of those meetings has any employe of the Texas Company ever threatened you or any of the other dealers with lease cancellation or some other kind of discrimination if you don't handle some or all of the line of Firestone or Goodrich? A. No, sir.

Q. In the course of your conversations with the dealers, have any of them ever told you that any such threat has been made to them? A. No, sir.

Q. What is the division point in which—the Texaco division point in which your station is located? A. Buffalo.

Q. That is in the Buffalo division? A. Yes.

Q. And do you know what the territory point is, the territorial point? Is that known as the eastern or northern territory? A. I would imagine that point would be in New York.

Q. You think your headquarters office is in New York. A. I think so.

Q. Do you buy your oil in carload lots or do you get this oil quantity discount letter? A. In carload lots?

Q. Yes. (5283) A. No, I don't buy in carload lots.

Q. Do you get this oil quantity discount check? A. That is right.

Q. Do you get a letter with it? A. Yes, sir.

Q. I show you Respondent's Exhibit 54 and ask you whether you recognize that as a letter which you have received in connection with quantity oil discount checks—I mean that form, of course, — not that specific letter; do you think you have received that? A. Yes, sir.

Colley Burnett, for Respondents—Cross

Cross-examination by Mr. Dias:

(5284) Q. Then was this 20 percent also on a yearly basis, the 20 percent of your tire purchases from Goodrich, —was that on a yearly basis? A. Yes, it would have to be on a yearly basis.

Q. And if that is so, then the 20 percent that you talk about, or rather, is it \$2500 for annual purchases of Good-year tires. I assume the 20 percent is \$2500 and is an annual figure. A. That would run, on the 40 percent, \$5,000 or \$6,000.

Q. In other words, you buy \$5,000 to \$6,000 worth of tires, 50 percent Goodyear and 50 percent Goodrich, is that correct? A. Yes.

Q. In other words, it would be about \$2500 to \$3,000 apiece; Goodrich and Goodyear? A. Yes.

Q. And that is annual purchases? A. Yes.

Q. What is the dollar volume of your sales, annual sales of batteries and accessories? Can you give us some idea of that? A. Oh, I would say \$6,000 to \$7,000, or \$6,000, probably.

(5285) Q. \$6,000 a year.

Mr. Lorenzen: He said \$6,000 to \$7,000.

A. Around \$6,000, I believe.

Q. I want you to notice, if you will, the fact that Respondent's Exhibit 54 came out of the Indianapolis Division, and will you read the language of the whole letter and tell us whether or not there is any difference between that letter and the one you usually get.

Can you tell me whether that is identically the same as the one you received? When was the last time you received one? A. I received a letter with our bonus check about the 1st of February.

Mervin A. Hummel, for Respondents—Direct

Q. May I suggest that your form may have been a brief, short form with just a blank spot to indicate the dollar volume of your bonus? In other words, it was a mimeographed or form letter but it just mentioned that attached is your check for your oil bonus and that is about all it said; do you recall that? A. I have the letter attached which read, I would say, the same as this letter.

Q. That is what we want to determine. You have had one like that? A. Yes; I won't say it was this year or last year, but I have had them over a period of years.

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(5291) MERVIN A. HUMMEL was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Hummel, will you give your full name and your home address to the reporter, please? A. Mervin A. Hummel, 501 Fifth Street, S.E., Watertown, South Dakota.

Q. What business are you in, Mr. Hummel? A. The service station business.

Q. What sort of gasoline do you sell? A. Texaco.

Q. Do you lease from the Texas Company? A. Yes, sir.

Q. And you are under one of these usual form leases which can be cancelled at the end of each year, but if it isn't cancelled it automatically continues? A. Yes.

Q. What is the location of your station? A. It's located—the address is 120 First Avenue, S.E., (5292) Watertown, South Dakota.

Q. How long have you been there? A. Two years.

Q. Before that time have you been a Texaco dealer at another location? A. Yes, sir.

Mervin A. Hummel, for Respondents—Direct

Q. Where was that, and during what time? A. That was on the corner of Kemp Avenue and Fifth Street, N. E.

Q. Same City? A. Same City; Watertown, South Dakota.

Q. And what was the time during which you were a dealer there? A. I operated that location for—from 1947 until 1953.

Q. And then there was a gap of two, three years? A. Three years, sir, yes.

Q. And then you started in again in 1956? A. Right.

Q. In the meantime you had some other occupation? A. Yes.

Q. Approximately what is the average monthly gallonage of the station in which you are now? A. 12,000 gallons.

Q. Of course, at both stations you handled TBA? A. Yes, sir.

(5293) Q. That was your own choice? A. Right.

Q. Now, will you tell us, when you started in this station in 1947—will you tell us at the time when you started, with whom you dealt for your TBA, and will you tell us how you came about to deal with them? A. Well, the consignee in Watertown was the person whom I leased the station from—or, I leased it through him from the Texas Company.

Q. Well, I meant your TBA. A. Oh, the TBA.

Q. It's all right. I don't mind this, but how—you did buy some TBA in that station, didn't you? A. Yes.

Q. All right. Now, when you first moved into that station from whom did you buy it, and will you tell us why you bought it from him? A. I purchased my TBA from the Firestone distributor in Watertown, South Dakota, and of course one of the reasons that I did that was because the manager of the Firestone store and I were buddies.

Mervin A. Hummel, for Respondents—Direct

together in the service. In fact, he was in my platoon in the army.

Q. Did you contact him for your supply of TBA before anyone of the Texas Company talked to you about TBA?

A. Yes.

(5294) Q. So that was entirely your own choosing?

A. Definitely.

Q. Now, for how long did you continue to buy from Firestone? A. I would say about three years.

Q. Then you had a disagreement, did you, with the Firestone supply point? A. Definitely.

Q. And did you stop buying then? A. Yes.

Q. Then to what make of TBA did you switch, and from whom did you buy? A. I started to sell Delco batteries, and I sold any tire that I could procure, other than Firestone.

Q. Other than Firestone? A. Yes, sir.

Q. Well, now, during that time, did anyone from the Texas Company ever threaten to cancel your lease or otherwise treat you badly if you didn't go back to the Firestone line? A. No, sir.

Q. Nothing like that happened? A. No, sir.

Q. And they didn't treat you badly or cancel your lease, is that right? A. No, sir.

Q. And you left that station at Fifth and Kemp because you (5295) wanted to? A. Right.

Q. And at the time you did leave, you were handling none—tires that were not Firestone? A. Yes, sir.

Q. Or Goodrich? A. Right.

Q. And Delco batteries? A. Right.

Q. Now, then, when this new station which you have at 120 First Avenue—is that a better station even than the one at Fifth and Kemp? A. Yes. The facilities are much better.

Mervin A. Hummel, for Respondents—Direct

Q. At the time when you were negotiating for the lease of this new station, did the representative of the Texas Company with whom you were dealing know that you were not going to handle either the Firestone or Goodrich line? A. I'm quite certain he did.

Q. And he leased you the station in spite of that? A. Yes.

Q. Now, with what sort of TBA did you open this station which you now have? A. I opened with Grant batteries and Armstrong tires.

Q. And tires? A. Right.

(5296) Q. You had no Firestone and no Goodrich TBA? A. No.

Q. And what is the TBA which you handle now? A. I still handle Armstrong tires and Grant batteries; and the other TBA items I pick up locally.

Q. Do you buy anything from the Firestone or Goodrich supply points? A. No.

Q. Do you occasionally pick up a Firestone or Goodrich tire? A. On request, yes.

Q. But that's the sole extent to which you buy anything from Firestone and Goodrich? A. Yes, it is.

Q. You stock Armstrong tires? A. A very minimum.

Q. That is you only stock a few tires all told? A. Right.

Q. And then most of your sales are made out of —on a pickup basis? A. Definitely, yes.

Q. About what percent of your sales are in Armstrong tires? A. 100%, I would say.

Q. Well, don't you ever get a request for some other make once in a while? A. No. Very — in fact, I would say I haven't sold anything (5297) than Armstrong for a year and a half.

Q. Well, tell me about the acceptance of this Armstrong tire in your particular neighborhood. A. It's very well accepted.

Mervin A. Hummel, for Respondents—Direct

Q. Do you have an active distributor there? A. Definitely.

Q. How about advertising? Is that Armstrong tire advertised a good deal? A. Locally, yes.

Q. A good deal? A. Yes.

Q. Would you say that it is advertised locally as much in that particular neighborhood as some of the national brands are? A. I would say it is.

Q. Do you find that the manager of this Armstrong distributing point is very active in soliciting service station dealers, including the Texaco stations? A. I would say he is very aggressive.

Q. And he solicits very actively? A. Definitely.

Q. Do you know of your own knowledge what luck he's had in soliciting other Texaco stations in your neighborhood? A. Well, I know one particular situation where the Texaco station had been taken over by a new operator, and — in fact, (5298) I think that — well, the morning that he went down in this particular location, it was quite early, and I imagine he got there just as he turned the key in the station door. And this was about the first or second day after he had taken the station over, and no one else had gotten a chance to solicit any of his business. And of course, this man being aggressive, he sold him on Armstrong tires.

Q. You mean as soon as he opened he put in a — as soon as he put in a stock he had Armstrong tires? A. Right.

Q. Was that a station in Watertown? A. It's located in a little town about twenty miles east of Watertown.

Q. What's the name of that town? A. Clear Lake, South Dakota.

Q. Now, what's the most recent change in operators of a Texaco station in Watertown, do you know? A. Do you mean the time interval?

Mervin A. Hummel, for Respondents—Direct

Q. No. I mean, when was it? A. About — I think about a year and a half ago.

Q. And do you know what that new lessee a year and a half ago opened with? A. He opened with Gillette tires.

Q. Not Firestone or Goodrich? A. Definitely not.

(5299) Q. Are they in a rack with the Armstrong name on it? A. Right. They're in a tire holder.

Q. Is it visible from the outside? A. It's — we have one in our front window.

Q. How about these Grant batteries which you handle? How are they displayed? A. They are displayed in the front window also.

Q. Where anybody can see them? A. Right. They're right before the public.

Q. How about this advertising which you say the local Armstrong dealer does? Have you participated in that? A. Yes.

Q. Has your name appeared in it? A. Definitely.

Q. By the way, does the same dealer also handle the Grant batteries which you sell? A. Yes.

Q. And has your advertising appeared in connection with those batteries as well as the tires? A. Yes.

Q. To a substantial extent? A. I'd say so.

Q. You have a lot of newspaper clippings that show your advertising? A. Well, every time they put an ad in the paper, why, our (5300) name is included in the ad.

Q. Has the Texas Company ever told you to discontinue that type of advertising? A. Definitely not.

Q. Have they ever told you to stop handling and displaying the Armstrong tire or the Grant battery? A. Never.

Q. Have they ever threatened you with the cancellation of a lease or that they would treat you badly in some other way if you didn't buy some or all of the Firestone and Goodrich TBA products? A. Never. I might add, sir—

Mervin A. Hummel, for Respondents—Direct

(5301) Q. Has the Texas Company done anything to prevent you from handling this Armstrong or Grant line?

A. Never.

Q. What sort of a newspaper are these Grant and Armstrong advertisements published in? A. The local daily paper.

Q. What's its name? A. The Watertown Public Opinion.

. . .

Q. Do you attend any dealers' meetings which are sponsored by the Texas Company? A. Yes, sir, we do.

Q. About on the average how many other Texas dealers would you say attend? A. I'd say somewhere around 20 to 25, perhaps 30 sometimes.

Q. During the course of those meetings, has any representative of the Texas Company ever threatened you or the dealers there generally with lease cancellation or some other unfavorable action if they didn't handle the Firestone or Goodrich line? A. No, sir.

Q. At those meetings do you get a chance to talk to the other dealers? A. Definitely.

(5302) Q. You've gotten pretty well acquainted with them? A. Yes.

Q. Have any of those dealers ever told you that the Texas Company has in any way threatened them with lease cancellation or other unfavorable conduct if they didn't handle the Firestone or Goodrich line? A. No, sir.

Q. Nothing like that? A. No.

Q. And of course all the other Texas dealers know what sort of TBA you are handling, don't they?

Mr. Dias: I object.

Hearing Examiner Kolb: The objection will be sustained.

Mervin A. Hummel, for Respondents—Cross

By Mr. Lorenzen:

Q. Well, have you kept it a secret from the other Texas dealers that you're handling this Armstrong line and the Grant line? A. No, sir.

Q. Do you obtain any helpful suggestions on merchandising TBA from the Texas Company and its Dealer Magazine? A. Yes, sir, we do.

Q. Do they tell you about merchandising at these dealers' meetings? A. Right.

Q. And it's also covered in the Texaco magazine? (5303) A. Yes.

Q. Do you find that that is helpful even in merchandising the line of TBA which you handle? A. Definitely, it is.

* * *

Cross-examination by Mr. Dias:

Q. When you recounted that story of the Armstrong man visiting that new Texaco station—do you recall that? A. Yes, sir.

Q. What was the name of that Texaco station? A. Well, I don't know the dealer's name, sir, but it's the only one in Clear Lake, South Dakota — the only Texaco station in Clear Lake.

Q. Clear Lake? A. Yes, sir.

Q. How far is that from Watertown? A. Approximately 21 miles.

Q. And you said you imagine that the Armstrong man was there before he even turned the key in the door? A. Well, I know he was. I'm positive, because the Armstrong man is a very good friend of mine, and he made the remark to me that he had a new Armstrong dealer who operated a Texaco station.

(5304) Q. Can you give us the time of that conversation? A. I can't sir. Not accurately.

Mervin A. Hummel, for Respondents—Cross

Q. What is the population of Watertown? A. It's about 14.5, sir.

Q. 14,500? A. Yes, sir.

Q. How many Texaco stations other than your own are in town? A. Six.

Q. Would you mind telling us what the difficulty was that you had with Firestone? A. Well, I placed several batteries in a fleet of vehicles that I was taking care of, and within 30 days I had to replace every single one of those batteries that I had installed in this fleet originally. And I couldn't get any satisfaction from the Firestone distributor, so as a result I put Delco batteries in all these vehicles.

Q. Can you tell us when approximately that occurred? A. In 1949.

Q. Did you mention the difficulty to Firestone? A. Definitely.

Q. And did they refuse to make adjustments on them? A. They just more or less ignored me.

Q. Who was the Firestone distributor at that time? A. William Marquardt.

Q. And is he still the Firestone distributor in Watertown? (5305) A. Yes, sir.

Q. And the gentlemen that operate the servicing end, are they still the same as the people over there in 1949? A. Yes, sir.

Q. Did you mention that difficulty to Texaco? A. I talked to Mr. Cole about it, the consignee.

Q. At that time you were renting or leasing from a consignee? A. No, I was leasing from the Texas Company.

Q. During the period of your occupancy of the first station? A. Yes, sir.

Q. I understood you to say you leased from the consignee. That's not so? A. No. It was a third party station, third party lease.

Mervin A. Hummell, for Respondents—Redirect

Q. I see. And in your current station you're leasing directly from Texaco? A. Third party lease; the same way.

Q. But, I mean, your connections are directly with Texaco rather than with any intermediary? A. Yes, sir.

Q. At these dealer meetings, has the TBA ever been discussed? A. During the last two years there has been very little discussion about it.

. . .

(5306) Redirect examination by Mr. Lorenzen:

Q. Those batteries with which you had that difficulty, were they a wet charge battery? A. Yes, sir.

Q. Would the particular difficulty which you had have been obviated by dry charge batteries?

Mr. Dias: I object, your Honor, until we find out why that would be so or what the difference might be so far as this gentleman knows.

Hearing Examiner Kolb: Overruled.

By Mr. Lorenzen:

Q. Did you understand the question? Maybe I put a \$64.00 word in there which— A. Well, the reason for the difficulty with the batteries is due to the fact that a wet type battery, if stored unused for any great length of time, will slowly deteriorate to the point where it no longer has a charge. And that was the reason for the difficulty I had with this group of Firestone batteries that I purchased. They had been stored too long, and as a result they just weren't up to top efficiency when I put them in the motor vehicles.

Q. Mr. Dias asked you how many Texaco stations there were in Watertown. You said six, I believe? A. Yes, sir.

Mervin A. Hummel, for Respondents—Recross

(5307) Q. How many of those handle either the Firestone or Goodrich line?

The Witness: One, sir.

By Mr. Lorenzen:

Q. And is that also a Goodrich distributor? A. Yes, sir.

(5308) *Recross examination by Mr. Dias:*

Q. And on these Texaco stations, how many of them are lessées and how many of them own their own stations, do you know? A. There is one out of the six in Watertown.

Q. That does what? A. That does own his own station.

Q. That does have his own station? A. Yes.

(5315) Mr. Lorenzen: Now there was introduced in evidence here as exhibit 35 a list of dealers who sold Texaco gasoline who did not handle any Firestone and Goodrich TBA. That was in 1951 and 1952 and apparently the purpose of introducing that exhibit was to show that the Texas Company knew which of its dealers did not handle Firestone and Goodrich and presumably counsel is going to argue from that that those particular dealers were subjected to a campaign of some kind and later were either cancelled out or conformed to what counsel thinks should be the Texas pattern, but which is not.

(5316) Now we have some witnesses whose

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names appeared on that list here to testify and of course they are included in the list of names we have given.

The Government sent questionnaires to these witnesses, either after this proceeding was commenced, or perhaps while it was in the stage of investigation, and we have in evidence as Respondent's exhibit 4 in this case one of the answers; a particular dealer happened to send us a copy of his answer and he said, in effect, that he was perfectly happy with the Texas Company and he wasn't sending any information to the Government, as I recall. Some of the other answers, of course, we don't have; in fact, we didn't know these questionnaires were sent until we discussed the matter with some of our witnesses.

In view of the agreement between counsel that the opposing parties would not contact the witnesses, it seems to us that in fairness to us and to the witnesses, any statements which were made in any event several years ago—we don't know whether it was in 1952 that this questionnaire was sent out or a year or two later, or in 1955, but in any event it was several years ago—these witnesses should be given an opportunity to refresh their recollection on statements which are in Mr. Dias' file. It seems to me we have been trying this case on the theory that it is not a game, that we are not trying to surprise the other side, but (5317) are trying to put the facts before you as best we can. Now we don't want any witness to testify to anything that happened years back if it isn't so. And I don't think Mr. Dias would want the witness to do that, nor your Honor. Human memory is feeble, and if there is anything at all with which a witness can refresh his recollection, particularly in the background of disclosure of names of

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witnesses in this case, it seems to me that the attorney supporting the complaint should be only too happy to permit the witness to refresh his recollection on any questionnaire of that kind in order to be sure that the testimony which is given is absolutely in accordance with the facts.

Now it seemed to us that Mr. Dias in fact did recognize that, because we made this demand for these papers on August 12 in a letter of which your Honor has a copy and which is annexed to our motion papers.

Mr. Dias, in response to that letter, said that he didn't agree to give us the information at that time and then he made some comments which I won't read into the record at this time, somewhat facetious, but I think they indicate the necessity of having these statements, because after all, this is not a game; we want to find out what the facts are. And finally he states that he would like to have some information on each of the witnesses, as a consideration for furnishing us with these statements and he backs up that (5318) request by saying "My proposal seems to be in keeping with Mr. Royall's remarks at page 91 of the August 30, 1956 pre-trial conference, and accordingly this will serve to notify you that I may make that as a counter-proposal to yours on August 18."

Well, we looked up this statement and it is the statement with which I opened this motion, in which it was suggested that the type of witnesses be given, the location of each, and the subject matter of what they were going to talk about. So we pointed out to Mr. Dias, in our reply, that we had gone even further than that, we had given him the names of each of the witnesses, we had given him the exact location of the

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witnesses, we had given him exactly the status of the witness, whether he was a dealer or an ex-dealer, whether he was an employee of the Texas Company, and we then went even further, we told him we would voluntarily tell him the subject matter of their testimony and advise him of the subject matter of the dealers' testimony and ex-dealers' testimony, which would be similar to the subject matter in Chicago, and he listened to that for a week, so I am sure he knows what the general subject matter is going to be, and we told him as to the company employees that their testimony was going to be specific denial of certain charges which had been made by the government witnesses against them and also the extent to which TBA of the Firestone and Goodrich line (5319) is or is not sold in some of the divisions with which those particular witnesses are connected.

So it seems to us that we complied with Mr. Dias' suggestion, to give him every opportunity to prepare for this examination, and fully met his offer.

As far as the general law goes, there seems to be no doubt that we are entitled to those papers, if this were a court case there is no question but that the court would say that under the Federal Rules of Civil Procedure, we would be entitled to those statements and we have cited to your Honor Hayman against Pullman Company, in the Northern District of Ohio, and several other cases, and the conclusions reached by Moore on Federal Practice, and the Encyclopedia of Federal Procedure.

It just seems to me there is no purpose in holding these statements out on us at all, except to turn this proceeding into a game rather than into an orderly procedure for discovering what the facts actually are.

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Mr. Dias: Your Honor, this is the first time I have heard any mention of legal support for this argument, but my position is this, and to make the record perfectly clear, there has been no deviation from the agreement that I have had with counsel; I gave them all the information per our agreement insofar as our witnesses were concerned.

Bear in mind we have a respondent coming in here (5320) presenting their witnesses, people for whom they vouch, and why we are supposed to assist them in verifying their witnesses' testimony is beyond me.

There are really about three reasons why I don't think they are entitled to them. In the first place, these documents, if there are any, come under the exclusion provided by attorney-work-sheets, work product. They are basically, again I say, respondents' witnesses, but there is a case that I think is especially in point, and I refer you to U. S. versus Deere & Co., et al. This is a rather lengthy finding, but very appropos in this case, so I will read it.

"As the Supreme Court recognized in Hickman versus Taylor, the term 'work product of a lawyer' cannot be defined precisely. It must be applied in light of the particular facts which are presented. As heretofore indicated, it was in response to plaintiff's interrogatories that defendants furnished plaintiff with the list of the former dealers and it was to these dealers that questionnaires were sent by the plaintiff. The attorneys assigned to the Anti-trust Division of the Government, who have been in active charge of these proceedings from their inception, framed the questionnaire and the accompanying letter to the former dealers. The letter was

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signed 'Herbert A. Bergson, Assistant Attorney General, by Melville C. Williams, Chief, Midwest Office, Anti-Trust Division. It seems clear, therefore, that these (5321) questionnaires were the work of the lawyers who were representing the government in the litigation in question.

"There are no unusual circumstances which would justify the yielding of the doctrine in the interest of justice. The names and addresses of these former dealers canvassed by the plaintiff are known to the defendants."

You will note the similarity with this instant case.

"Similar questionnaires may be submitted by defendants to them if they so desire. Representatives of the defendants are located in the immediate areas where most of the ex-dealers reside. This Court is not unmindful of some of the practical difficulties which may confront the defendants in carrying on their investigation with their former dealers, many of whom may have grievances, because they are no longer associated with the particular defendant. And there may be ex-dealers who may refuse for some reason to give any statements, or refuse to divulge to the defendants the nature of the answers made to the questionnaires because they did not keep copies of the answers and they do not remember clearly the exact wording of the information imparted to the Government. But these difficulties are not so insurmountable that an exception should be made to the rule that the work product of a lawyer need not be divulged. The defendants are substantial companies which have adequate facilities for investigation (5322) and making due

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preparations for trial. The information which the Government acquired from the answers to the questionnaires was obtained long after the lawsuit was commenced. There is no marked disparity between the parties in obtaining facts and in making due preparations for trial."

That is at F. R. D. 527-528, and as I said in the beginning, the respondents are offering these witnesses and vouching for their honesty and the truth and I don't doubt they seriously think that is the situation, but if the witnesses do not remember signing statements, and if the respondents are not confident that their witnesses are prepared to tell the complete truth in this matter, they are still not hurt; they just need not put the witness on.

For that reason, I suggest that the motion be denied.

Mr. Royall: What is the citation you gave?

Mr. Dias: F. R. D. 527-528.

Mr. Royall: Who is speaking in that?

Mr. Dias: The court.

Mr. Royall: What court?

Mr. Dias: I don't know off-hand. You will find it in the record.

Mr. Lorenzen: We would be very happy to file this motion and we have cases which make the thing perfectly clear that statements signed by the witnesses are quite different from the papers in Hickman against Taylor. That was a case (5323) in which the lawyer himself went out and made notes, and he was not required to disclose those notes. That is not the situation here. We don't want anything Mr. Dias himself took. If he went out to interview these witnesses and made notes of his

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own, that is a different proposition. But as I understand it, questionnaires of some kind were sent out, signed by the witness; they are exactly the type of witness statements that time and again have been given to the parties and indeed we have one case here in which the plaintiff, the party himself, made a statement of which the defendant had gotten hold and the Court made the defendant give the plaintiff his own statement, so that he might have a look at it and know what was in that before he testified, in order to refresh his recollection.

There is no fear on our part that these people won't be perfectly honest, but we know to a certain extent on cross-examination it is a contest of wits between the attorney and the witness, and I just think in fairness to the witness, if he has made a statement, he should be allowed to see it to refresh his recollection.

I am sure that the basic reason Mr. Dias doesn't want to give us these statements is because they would support the witness' testimony a hundred percent, and if there is the slightest discrepancy between it, we would like to know, the witness would like to know, and we would like to present (5324) the facts to your Honor fully and honestly to begin with.

We are going to call these witnesses, whether we get the statements or not, but I think it is a very unfair procedure for counsel who has in his possession statements made some years ago, to refuse to turn those statements over to us, and to the witnesses, who signed them, to permit them to refresh their recollection before they take the stand. I think there is no sense in it except, as I say, to turn this

Colloquy

into a game instead of an inquest into the facts.

Mr. Dias: If your Honor please, the comment that there may be a battle of wits going on between the cross-examiner and the witness—I have never won a battle of wits yet. But insofar as the statements are concerned, we have a further problem in connection with the confidentiality of documents in the Commission's files. I am not urging that at this time, but I do mention it.

Insofar as the work product of counsel supporting the complaint, if you will take a look at Respondents' exhibit 4, you will note that that document was signed by me. That certainly comes within work product of counsel supporting the complaint. That is one type of statement. (Handing exhibit to the Examiner.)

As to any other type statements we may have, the fact that an agent of counsel supporting the complaint obtains some statements, or may have obtained some statements, (5325) certainly doesn't take it out of the doctrine of work product. As you know, we have a project attorney here who is directly responsible for the preparation of these complaints, that is, the preparation of the investigation and then subsequently the issuance of the complaint, and the proper trial of it, and at all times we are under his immediate supervision.

That being so, and since he directed the institution, or the gathering of any statements, this is all part of a work product that is subject to the doctrine of immunity of work product.

Hearing Examiner Kolb: The motion will be denied. Proceed.

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James L. Hendrickson, for Respondents—Direct

(5326) JAMES L. HENDRICKSON was called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Royall:

Q. Will you give your name and address and the address of your place of business? A. James L. Hendrickson, 2720 Walnut Street, Penbrook, Harrisburg, Pennsylvania.

Q. Is that your business address? A. Yes, sir.

Q. Now, are you a lessee of a Texaco filling station? A. Yes, sir.

Q. What is the name of the station? A. Hendrickson Texaco Service.

Q. Is that one of these annual leases that is automatically renewable? A. Yes, sir.

Q. How long have you been the lessee of that station? A. Five years.

Q. What is your average monthly gallonage? A. Approximately 22,000.

(5327) Q. Did you handle tires, batteries and accessories? A. Yes, sir, a full line.

Q. Does Texas Company recommend a particular line to you? A. Texas Company recommends Goodrich and Firestone.

Q. Now, do you know about what percentage of your TBA business is tires? A. About thirty percent.

Q. And how much of it is batteries? A. About ten percent.

Q. And that would mean sixty percent were accessories? A. Yes—no, sixty percent would be gasoline—you mean TBA, yes, sir, sixty percent.

Q. Yes.

Now, which of those three items has the greatest turnover? A. The accessories.

James L. Hendrickson, for Respondents—Direct

Q. And therefore, your inventory figures, at any particular time do not necessarily represent the difference in volume, do they? A. No, sir.

Q. What kind of tires do you buy? A. Firestone, Goodyear, and Dunlop.

Q. What proportion of your tires are Goodyear? A. About 75 percent.

Q. And what proportion are Firestone? A. About one percent—I am sorry, sir, about 25 percent.

(5328) Q. Do you buy any Goodrich tires? A. No, sir, never bought any.

Q. Have you at other times handled other brands of tires, aside from Goodrich and Firestone? A. Yes, sir. Gates, I handled Gates tires.

Q. Have you handled Kelly tires? A. I handled them before I was a Texaco dealer.

Q. Century tires? A. No, sir.

Q. What sort of batteries do you sell? A. Exide.

Q. Do you sell any Firestone or Goodrich batteries? A. No, sir.

Q. Did you purchase a substantial amount of your accessories from Goodrich or Firestone? A. None of it, sir. Approximately none.

Q. Could you tell us, if I give the names of some of the companies, from whom you buy your TBA? Or may I ask you this way: Do you buy from the Harrisburg Auto— A. Harrisburg Auto Parts Company, yes, sir.

Q. Do you buy from the E. Mather Company? A. Yes, sir.

Q. What items, in general, do they sell you, the Mather Company? A. Spark plugs, Filter cartridges, hoses, fan belts, (5329) polishes, cleaners, waxes.

Q. And does Harrisburg also sell you spark plugs? A. Yes, sir.

James L. Hendrickson, for Respondents—Direct

Q. Do you buy from the R&H Distributors in Harrisburg? A. Yes, sir.

Q. What do you buy from them? A. Exide batteries.

Q. You buy all of your batteries from them? A. Yes, sir.

Q. Do you buy from the Quaker City Motor Parts Company? A. Yes, sir.

Q. Do you buy part of your spark plugs from them? A. Spark plugs, filter cartridges, points, condensers, and so forth.

Q. Do you buy from Whitcombs Incorporated? A. I do occasionally.

Q. Is that a Firestone— A. That is a Firestone distributor, yes, sir.

Q. Do you buy from D. K. Norwalk? A. I do get recapping done there, sir.

Q. Do you buy from Zirilli Brothers? A. Yes, sir.

Q. Do you buy tires from them? A. I buy Firestone tires from them. They are an Esso Service Station dealer.

(5330) Q. And do you buy from Gruber Tire Company? A. Yes, sir.

Q. Do you buy from the Ullrich Auto Supply Company? A. Yes, sir.

Q. You buy from them filters and wiper blades? A. Yes, sir.

Q. Now, who selects—who makes the decision and selection as to the TBA you buy and from whom you buy it? A. I do.

Q. On what basis, for example, do you select your tires?

A. On a price basis; the place I get the best price.

Q. And why do you buy Exide batteries? A. Well, it is a first-line battery; it is a good name.

Q. What is the average of the TBA you buy per year, or per month, whichever you choose to give, how much

James L. Hendrickson, for Respondents—Direct

TBA do you sell, at your selling price, put it that way, a year, approximately? A. Oh, about 20 percent.

Q. I mean, how much do you sell—how much in dollars, I mean? A. By month, probably about \$800.

Q. Is your TBA business increasing? A. Yes, sir.

Q. What percent would you say of your entire TBA is Firestone and Goodrich? A. About one percent.

(5331) Q. Now, during the time that—let me ask you this: These items which you purchased, are they on display and open to public view? A. Yes, sir.

Q. Do the Texas salesmen see them? A. Yes, sir.

Q. Did the Texas salesmen, or any representative of the Texas Company, ever complain to you about the display or the handling of these non-sponsored products? A. No, sir.

Q. Have they ever requested you to remove them or place them in any other position? A. No, sir.

Q. Do you advertise in any way any of these goods you buy other than from Firestone—you say you buy none from Goodrich. Do you, for example—Exide batteries, do you give any publicity to that? A. Yes, sir.

Q. In what way? A. In the classified directory of the telephone book.

Q. Have you had prepared, or has there been prepared, photostats of your store, showing the items that you carry? A. There has been pictures taken, yes, sir.

Q. And are those representative of what the condition is and has been? (5332) A. Yes, sir.

Q. Now let me ask you this, Mr. Whiting. During the time you have been a lessee, have you had a knowledge of the Texas Company's policy in TBA; that is, that part of the policy which relates to the independence of the dealer? A. Yes, sir.

James L. Hendrickson, for Respondents—Direct

Q. What is that policy? A. Well, the policy, as I understand it, is that you can buy and operate to the best of your ability.

Q. Texas does recommend to you Firestone and Goodrich, do they not? A. They do, sir.

Q. Did you ever, in connection with that recommendation, or under any other circumstances, commit yourself to Texas, or promise to Texas to buy Goodrich or Firestone products? A. No, sir.

(5333) Q. Has Texas ever made the claim that you made such a promise? A. No, sir.

Q. Do you or do you not understand you are entirely free to purchase your TBA products from whom you wish, and the brand you wish? A. I understand I can.

Q. And have you acted on that policy? A. Yes, sir.

Q. Has Texas in any way ever tried to force you or compel you to buy any particular brand or from any particular person? A. No, sir.

Q. Has the matter of where and from whom you purchase your TBA ever been raised in connection with your lease or the amount of rental, or the repair of your station, or maintenance of your station, or anything else? A. No, sir.

Q. Have you any feeling that the purchase by you of your products principally from other than Firestone and Goodrich affects you in any way in your relations with the Texas Company, under your lease, or otherwise? A. No, sir.

Q. Have you seen at any time any written papers from the Texas Company announcing this policy of independence of the dealer? A. Yes, sir.

(5334) Q. In what connection? A. In the Company magazine.

James L. Hendrickson, for Respondents—Direct

Q. And did you ever receive these oil discount letters relating to oil discounts? A. Yes, sir.

Q. Was there any mention in that of this policy? A. No, sir.

Q. Did you ever—what was your answer to that? A. No, sir.

Q. Nothing in the letters about—I don't know whether you understood my question or not. A. Would you repeat the question?

Q. I said, was there anything in those letters relative to your independence in buying? A. I did, yes, sir, every year since I have been with the Company.

Q. And did they refer to that policy of independence? A. Yes, sir.

. . .

Q. Now, what advantage do you get from handling TBA products? (5335) A. Well, it is a necessary evil in the service station business. It helps you supplement other income.

Q. And does it have any effect upon your gasoline gallonage? A. Yes, sir; it helps it.

Q. Now, does the Texas Company assist you in any way in the merchandizing of TBA? A. The salesmen assist in recommending certain displays, at dealer meetings we go to.

Q. And do they discuss with you the record keeping, current record keeping under S-75? A. Yes, sir.

Q. Is that service rendered to you used by you and known to be used by you on non-sponsored goods, as well as the Firestone and Goodrich goods? A. Yes, sir.

Q. And does that benefit you in the sale of non-sponsored goods? A. Yes, sir.

James L. Hendrickson, for Respondents—Direct

Q. Do they send you a dealer magazine? A. Yes, sir; every month.

Q. Is that of value to you in connection with your sale of non-sponsored TBA? A. Yes, sir.

Q. Now you spoke of the dealers' meetings. Do you attend those meetings? (5336) A. Quite regularly.

Q. Do you find and learn in those meetings matters that will help you in the sale of TBA, whether it be sponsored or non-sponsored? A. Yes, sir.

Q. Do many dealers attend those meetings? A. Yes, sir; about 30 to 40 men.

Q. At any of those meetings have you ever witnessed, or heard, any efforts by the Texas Company to force or compel any dealer to buy Firestone or Goodrich products? A. No, sir.

Q. They do recommend them, do they not? A. Yes, sir.

Q. At these meetings, were there from time to time representatives or distributors who sell non-sponsored products present? A. No, sir.

Q. You didn't see any of those there? A. No, sir.

Q. At any of these meetings, was there any threat or implied threat made in your hearing of treating badly any one who did not buy sponsored TBA? A. No, sir.

Q. Did you have a chance to talk informally with these dealers at these meetings? A. Yes, sir.

(5337) Q. And did they generally come from your area? A. Yes, sir.

Q. Did you hear, at any time, any complaint from any dealer as to coercion or forcing them to buy sponsored TBA? A. No, sir.

Q. Did you hear any statement from any dealer to the effect that the failure to handle sponsored TBA would put them at a disadvantage with the Texas Company? A. No, sir.

James L. Hendrickson, for Respondents—Direct

Q. Now, is there in your lease any provision proscribing or restricting the hours that you shall keep open? A. No, sir.

Q. Or providing any minimum hours? A. No, sir.

Q. What hours do you keep open at this time? A. 7:00 a.m. to 10:00 p.m.

Q. Have you at any earlier period kept open a longer period? A. Yes, sir; 24 hours.

Q. When you changed from 24 hours to your present hours of operation, was there any complaint from the Texas Company about it? A. No, sir.

. . .

(5338) Q. Do you know whether or not it is difficult for oil companies to get dealers for their—good dealers for their stations?

. . .

Q. Do you know that? A. In the general neighborhood, it is difficult.

Q. In your area are there a considerable number of empty service stations? A. There are some, yes, sir.

Q. Is your station doing well? A. Yes, sir.

. . .

(5339) Q. If, according to your figures, you buy approximately 7½ percent of your TBA from Firestone, do you buy all that from a designated supplier, or do you buy only part of it from a designated supplier? A. I buy about one percent of my TBA from a Firestone distributor.

Hearing Examiner Kolb: How much from the designated suppliers?

Mr. Royall: Designated distributor or supplier?

(5340) The Witness: I buy Firestone tires from an Esso dealer, not from a designated supplier.

James L. Hendrickson, for Respondents—Cross

By Mr. Royall:

Q. Does that explain the difference between the one percent and the larger percentage? A. Yes, sir. I do buy Firestone tires, but not from a designated supplier.

Mr. Royall: That is all, your Honor.

Cross examination by Mr. Dias:

Q. How large a town is Penbrook? A. About 3,500.

Q. Do you know how many stations of all kinds are in town? A. About a dozen.

Q. How many Texaco, besides yourself? A. One.

Q. One other besides yourself? A. Yes, sir.

Q. Would you care to give us his name? A. J. O. Graham.

Q. Do you have a Goodrich distributor in Penbrook? A. No, sir; Harrisburg.

Q. How far is that? A. It is about two miles to the distributor's place of business.

(5341) Q. Penbrook is a suburb of Harrisburg? A. Yes, sir.

Q. And it is about two miles to the distributor? A. Yes, sir.

Q. And who did you say was the Firestone distributor? A. Whitcombs.

Q. Are you carried in the classified directory under Firestone tires, also? A. No, sir.

Q. On these accessories that you purchase, you mentioned that you handled Gates tires. Isn't that on a demand-purchase basis? In other words, if a customer comes in and asks you, you buy Gates? A. No. I set myself up to try to be a distributor of Gates tires several years ago.

Q. When was that? A. About two years ago.

Q. Was this a new station that you moved into five years ago? A. No. The station had been there.

James L. Hendrickson, for Respondents—Cross.

Q. What brand of plugs do you carry? A. Champion.

Q. And filters? A. Fram.

Q. Fan belts? A. Gates.

(5342) Q. Wiper blades. A. Anco.

Q. How often do you attend the dealers meetings? A. I don't think I have ever missed any.

Q. Didn't you say before you attend them quite frequently? A. Whenever they have them, yes, sir.

Q. How often do they have them? A. Twice a year, if I recollect correctly.

Q. And you attended each one for the last five years, since you have been a Texaco dealer? A. Yes, sir.

Q. Were you a Texaco dealer before you went into this station? A. No. I was a Sun Oil Company dealer.

Q. At these meetings have you ever seen or heard from Firestone and Goodrich representatives? A. Yes, sir.

Q. And they discussed their products? A. Put on displays and discussed it.

Q. Where are those dealer meetings held? A. They have been held usually in the American Legion home or a place that is adequate to have them.

Q. In Penbrook? A. In Harrisburg, or on the west shore, the other side of Harrisburg.

Q. And all the dealers from the entire area come? (5343) A. Yes, sir.

Q. What do you generally talk about when you talk informally with these dealers? A. About our products, and try to find out if somebody has something that it is possible for an individual to handle to make more money.

Q. Aren't they sort of social gatherings as much as anything? A. Well, there is a social gathering afterwards always.

Q. Is that when you talk with these dealers? A. We usually have a question and answer period, after the pro-

James L. Hendrickson, for Respondents—Cross

gram, by the person conducting the program, after the film, or whatever the discussion is.

Q. Who conducts the program? A. Texas Company.

Q. And there are Firestone and/or Goodrich representatives present? A. I have seen them both at one meeting. Usually they are—

Q. One or the other? A. Yes, sir.

Q. After the question and answer program, is that when you socialize? A. Yes, after the meeting is over.

Q. Have soft drinks and sandwiches? A. A little Schnapps.

(5344) Q. Do you recall the exact language in this bonus letter you say you received, on oil? A. Not the exact language, but it brings out the point that the amount of money you can make by selling more oil.

Q. Is that about the extent of it? A. Well, it brings out the facts about you being a Texaco dealer and the advantages of it.

Q. And is that about the extent of it? A. As far as I know.

Q. Does this other Texaco operator in town also attend these dealer meetings? A. I have seen him once.

Q. Does he own his own station? A. He owns his own station and sells nothing but gasoline.

Q. Is competition pretty severe in Pembroke? A. Yes, sir.

Q. Are there any stations located near yours? A. Well, I am between two stations, a block on either side, one on one side and one diagonally across the street.

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Howard O. Whiting, for Respondents—Direct

(5345) HOWARD O. WHITING was called as a witness on behalf of the Respondents, and having been duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Would you give your full name to the reporter?

A. Howard O. Whiting.

Q. Mr. Whiting, I am quoting from exhibit 35 in this case. The name H. O. Whiting, U. S. Number 21, Ripley, West Virginia appears there. Would that be you? A. That is right.

Q. Mr. Whiting, this exhibit which the Government adduced and put in evidence is dated 1952, January. Now since that time do you recall if the Federal Trade Commission sent any request for information to you? A. I think that was about 1952.

Q. Do you think also at some time subsequent to that? A. That is right.

(5346) Q. Did you fill in those questionnaires, or whatever the request for information was, that the Federal Trade Commission sent to you? A. I did.

Q. Why did you fill them in? A. I felt it was my duty to answer any questions that was asked of me.

Q. So you did fill those statements in and you sent them back to the Federal Trade Commission, or whatever agency it was that inquired of you? A. Yes, sir.

Q. Do you recall now what was the subject matter of that inquiry? A. No, I don't.

Q. Would you like to see a copy of that questionnaire before you testify in this case? A. Yes, I would.

Mr. Lorenzen: Your Honor, I would like to renew my motion at this time to ask counsel supporting the complaint if he has in his possession

Howard O. Whiting, for Respondents—Direct

any information furnished by Mr. Whiting as described in his testimony to furnish a copy of that statement to Mr. Whiting.

Hearing Examiner Kolb: Mr. Lorenzen, this is your witness. I see no occasion for demanding any documents which the Commission may have in their file to contradict what (5347) this man may testify on direct examination. I assume he is going to tell the truth and I think we can go on on that basis.

Mr. Lorenzen: I am sure he is.

Hearing Examiner Kolb: It seems like you are afraid he is not.

Mr. Lorenzen: I want this document for two purposes, your Honor—

Hearing Examiner Kolb: I don't think it is proper. I overrule the request.

Mr. Lorenzen: I won't argue any further; it is for the reasons stated before.

I would like to move at this time that the attorney supporting the complaint be foreclosed from using the statement which he has here and which at this time he refuses to disclose to this witness.

Hearing Examiner Kolb: I am denying the motion.

Mr. Dias: I would like to make one thing clear. The implication is that I have such a statement, and of course there is no assurance that I do. I would like that clearly understood.

Mr. Lorenzen: Will you make a statement on the record that you do not have it, in which case I will withdraw my motion?

Mr. Dias: I certainly will not. I may or may not have a statement.

Howard O. Whiting, for Respondents—Direct

(5348) Hearing Examiner Kolb: Let's proceed with the examination of the witness.

Mr. Lorenzen: All right.

By Mr. Lorenzen:

Q. Mr. Whiting, you are in the service station business, are you? A. I am.

Q. What sort of gasoline do you sell? A. Texaco.

Q. Do you have a lease from the Texas Company? A. I do.

Q. Is it one of those leases which renew itself each year? A. Yes, sir.

Q. About what is the gallonage of your station? A. About 6,000 gallons a month.

Q. How long have you been in this particular station? A. Ten years and two months.

Q. Have you handled any TBA during this time? A. I have.

Q. Have you found it useful to your business? A. I have.

Q. You make money on it? A. I do.

Q. You think it helps you get customers? A. It certainly does.

(5349) Q. Are those the reasons for which you handle it? A. That is the reason.

Q. Now tell me what kind of tires you handle now? A. I am handling Siberling, Mohawk, and McCreary.

Q. Can you tell me about how many of each you have in stock? A. I have approximately 150 Siberling—no, I take that back — about 160 Mohawk, and 50 Siberling and 25 McCreary.

Q. Any Firestone? A. No.

Q. Any Goodrich? A. No.

Q. How about batteries, what kind do you have? A. Willard.

Howard O. Whiting, for Respondents—Direct

Q. What kind of accessories do you have? A. Well, I have filters and fan belts and wiper blades and also I have waxes and polishes.

Q. Do you buy any of those from a Firestone or Goodrich distributor? A. No.

Q. Who are your principal suppliers? A. The Automotive Supplies—

Q. Where is that located? A. One in Ripley and one in Charleston, West Virginia.

Q. You buy most of your accessories from them, do you, or a good many of them? (5350) A. I do.

Q. What type of fan belts do you have? A. Gates.

Q. And radiator hoses? A. I don't have any of those, no.

Q. Do you display Gates fan belts? A. I do.

Q. With the Gates sleeves on them? A. Yes, sir.

Q. In a Gates' rack? A. Yes, sir.

Q. What other supply point do you use? A. Now, do you mean for these accessories, or—

Q. No, let's take tires and batteries and accessories, all together. A. I get my tires out of Siberling and Mohawk out of Akron, from the factories, and my McCreary comes out of Indiana, Pennsylvania, factory.

Q. Those sources of supply are all some distance from your place of business, are they not? A. They are.

Q. Do you have Firestone and Goodrich supply points readily available to you? A. I do.

Q. But it is your choice that you buy the Siberling and (5351) Mohawk from the factory? A. It is.

Q. Do you also use Center Auto Supply, or Carter? A. Center Auto Supply has gone out of business now.

Q. But you did patronize them? A. I have.

Q. Where do you buy the accessories which you used to buy from Center? A. From the Automotive Supply in Ripley and also Spencer, West Virginia.

Howard O. Whiting, for Respondents—Direct

Q. And neither one of those are Firestone or Goodrich supply points? A. They are not.

Q. Do you display all of your TBA? A. I do.

Q. Have you ever made any effort to hide it? A. No.

Q. Have you purchased these tires and these batteries and accessories pursuant to your understanding of what the Texas TBA policy has been? A. Yes, sir.

Q. And what it is now? A. Yes, sir.

Q. What is your understanding of that policy? A. Well, they have a policy there that they furnish their (5352) dealers with tires and accessories, anything they may want to handle.

Q. You mean they recommend to dealers to take Firestone? A. They do, they recommend Goodrich to me.

Q. Is that what you meant when you said "furnish"? A. Yes, at my request they would furnish them.

Q. But you haven't requested it, have you? A. No.

Q. And has it been your understanding that you could buy your tires and batteries and accessories wherever you wanted to? A. Yes, sir.

Q. And you acted on that understanding? A. Yes, sir.

Q. Has anyone from the Texas Company ever made any threat to you to cancel your lease or not to remodel your station or otherwise treat you badly if you did not stop handling the Siberling and Mohawk tires? A. No, sir.

Q. Or any of these batteries or accessories which you handle? A. No, sir.

Q. No such threat has ever been made to you? A. At no time.

Q. Has anyone from the Texas Company ever told you to hide the tires and batteries and accessories which you handle? (5353) A. No, sir.

Q. Or threatened that if you did handle them they would cancel your lease or otherwise treat you badly? A. No, sir.

Howard O. Whiting, for Respondents—Direct

Q. Nothing like that has ever happened? A. No.

Q. Have you had Siberling tires and Willard batteries in that station from the beginning? A. Yes. I have had Willard batteries from the beginning.

Q. Willard batteries you have had from the beginning? A. But I didn't have the Siberling tires until approximately four years after I was at the station.

Q. But ever since then, and that would be about 1952, you have handled those tires? A. I have.

Q. And you have continued to be a lessee of the Texas Company? A. I have.

Q. Now as a matter of fact, they just remodeled your station for you, didn't they? A. They have.

Q. Porcelainized the whole front of it? A. Yes, sir.

Q. And as a condition of that, have they told you you had to stop handling these tires or batteries? (5354) A. No.

Q. Now I show you a photograph here and ask you if you recognize that picture. A. I do.

Q. What is that a picture of? A. That is a picture of my station, as it has been partly renewed. There is some more yet to be done on this.

Q. But that is generally the way your station looks, since it has been porcelainized? A. Yes, sir.

Q. Is that automobile in front of the station, which has the name Whiting Tire Service, and Siberling Tires, yours? A. It is.

Q. Is it generally located in front of your station, when you don't have it out? A. That is the official place for parking that, yes.

Q. Now I notice on this picture there are no names at all, either yours or any tire identification. Will you tell us how that comes about? A. The signs were taken off in order to put the porcelain on and while it is not a hundred

Howard O. Whiting, for Respondents—Direct

percent complete, I am waiting until it is before I put the name of the station on.

Q. And then before this porcelainizing happened, you had the name of the station on there? A. I did, Whiting Tire Service.

(5355) Q. And did you have the name Siberling Tires on there? A. Yes, sir.

Q. And are you going to put both names back as soon as the job is finished? A. Yes, sir.

Mr. Lorenzen: I ask to have this exhibit about which the witness testified marked Respondent's exhibit 64.

. . .

Q. I show you another photograph and ask you whether that similarly shows your station and the automobile with the Siberling sign? A. That is right, it is.

Q. And that was taken about the same time as exhibit 64-A, was it? A. Yes, sir.

Q. Now I call your attention to the Siberling tire sign on the left hand side, and ask you whether that is regularly there in place at your station? A. That is regularly placed on my tire rack, outside rack, (5356) that I keep out there during the day.

Q. Is that in addition to the Siberling sign, which you say is up there, when the station is not being remodeled? A. It is.

Mr. Lorenzen: I ask that this photograph be marked exhibit 64-B.

. . .

Q. About what is your TBA volume a month, in dollars? Do you know about what it is? A. It varies considerably,

Howard O. Whiting, for Respondents—Direct

and has increased in the last few months to approximately \$2,000 per month.

Q. Are most of your customers local people whom you know in the community? A. They are.

Q. And they accept your recommendation on the type of tires you sell? (5357) A. They do.

Q. Now are you listed in the phone book under any TBA product? A. Under Siberling tires.

Q. Do you do any advertising, radio or newspaper? A. I do.

Q. And do you feature any particular TBA product in that? A. Siberling and Mohawk tires.

Q. Has anyone from the Texas Company ever told you to discontinue such advertising or such phone book listing under the penalty of having your lease cancelled? A. No, sir.

Q. Do you stock any Willard batteries now? A. A few, I keep on hand four or five, something like that.

Q. Your distributor is close at hand? A. It is within a block.

Q. So that most of your battery sales are on a pick-up basis? A. That is right.

Q. Do you get any help from the Texas Company in any way in selling your TBA? A. I do.

Q. What sort of help do you get? A. From instructions at meetings, and magazines, information they put out.

Q. The Texas dealer magazine? (5358) A. That is right.

Q. That contains articles on TBA? A. It does.

Q. Do you find that helpful? A. I do.

Q. Even in selling Siberling and Mohawk tires and Willard batteries and your accessories? A. Yes, sir.

Q. Do you attend those dealer meetings quite often? A. I do, approximately two a year.

Howard O. Whiting, for Respondents—Direct

Q. And during the time you have been a dealer, would you say you have attended most of them? A. I have.

Q. Are other dealers there, too? A. Yes, sir.

Q. About how many other dealers would you say, on the average, show up at those meetings? A. Well, usually, in one meeting that I attend in Charleston, West Virginia yearly there are approximately 75. Another meeting that I attend in Point Pleasant, West Virginia there are approximately 20.

Q. Taking both of these meetings together, has anyone from the Texas Company, at that time, ever threatened you or any of the dealers there with lease cancellation or any other unfavorable conduct, if you didn't handle some or all of the (5359) Firestone or Goodrich line?

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The Witness: I have never heard.

By Mr. Lorenzen:

Q. At the more formal part of the meeting, do you talk to the dealers themselves? A. I do.

Q. You talk shop to some extent with them? A. We do.

Q. You get fairly well acquainted with them? A. Yes, sir.

Q. Have any of the Texaco dealers at any time complained to you that the Texas Company has threatened them in any way with lease cancellation or other unfavorable conduct, if they didn't handle some or all of the Firestone or Goodrich line? (5360) A. No, sir.

Q. No such complaints have ever been made to you? A. No, sir.

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Howard O. Whiting, for Respondents—Cross

Cross-examination by Mr. Dias:

Q. Are your meetings like the other gentleman's, social affairs after the formal meeting? A. To a certain extent.

Q. You, too, have some schnapps and sandwiches? A. We do, sometimes. Well, eats and drinks of different kinds.

Q. A social gathering, more or less, after the meeting? A. Well, afterwards, yes.

Q. Can you describe the regular meeting, what goes on at that time? A. Well, we discuss the products which the Texas Company sells, such as gasoline and oils, and TBA.

Q. And do you sometimes see Firestone or Goodrich representatives at those meetings? A. I do.

Q. Do they ever miss any of the meetings? A. Yes.

Q. They do miss some? A. Yes, sir.

(5361) Q. How many years have you been going to these meetings? A. Ten years.

Q. And you go to two a year? A. Approximately.

Q. The one with the 75 dealers in Charleston, that is the larger one, I mean, that is the big one of the year? A. Yes, sir.

Q. Do you see Firestone and Goodrich, or Firestone or Goodrich salesmen at those meetings? A. Yes, sir.

Q. Do they miss any of those meetings? A. No, sir.

Q. What is this meeting of 20 dealers in Point Pleasant, what sort is that? A. That is our immediate area. That is our bulk plant manager who holds those meetings usually with the aid of the state men.

Q. State Texaco man? A. Yes. They discuss the oils and gas and TBA.

Q. Did you say Point Pleasant, is that where your bulk plant is? A. Yes.

(5362) Q. Do you mind describing your station before it was rehabilitated? A. Well, it was, before the porcelain was put on?

Howard O. Whiting, for Respondents—Cross

Q. Yes. A. It was bridge-building which had to be painted every year, and it was pretty shabby looking.

Q. How long, have you been in that same building, ever since you have been with Texaco? A. Yes.

Q. Are there more modern Texaco stations in town? A. No, sir.

Q. As a matter of fact, there is only one other Texaco station in town, isn't there? A. Not in town, no other.

Q. No other in the town of— A. No, sir. Outside of town.

Q. Who is he? A. Howard Winters.

Q. And he is a sort of supermarket, carries all sorts of items? A. Yes, sir.

Q. Is he also a Texaco wholesaler? A. I don't know whether you would call it "wholesale" or not.

Q. You say he is the only Texaco station near Ripley. (5363) What is the population of Ripley? A. Approximately 3500.

Q. Is there a Firestone distributor in town? A. Yes, sir.

Q. Who is that? A. It is known as the Skeen Service Store.

Q. Do they also handle gasoline at that— A. No, sir.

Q. Is that the only Firestone distributor? A. Yes, sir.

Q. Are you sure Ashland doesn't carry Firestone? A. I don't know that they carry them for sure. They may be.

Q. How many Goodrich outlets are in town? Is there a Goodrich store in town? A. One—

Q. Where is that located? A. (continuing)—that I know of.

Q. Where? A. Goodrich tires are handled by Fisher Chevrolet, Inc.

Q. Did you say Winter's does carry Texaco gasoline? A. He does.

Howard O. Whiting, for Respondents—Cross

Q. And you did or did not know whether or not he carried Firestone products? A. He carries Firestone tires.

Q. Tires? (5364) A. Yes, sir.

Q. You have given us the dollar volume of your TBA sales per month. Could you give us some idea of your dollar volume of gas sales per month? A. Something like \$1500.

Q. \$1500? A. Fifteen to two thousand, something like that.

Q. Is that a pretty good average monthly throughout the year? A. It is.

Q. I believe you stated that for a while you did not carry Seiberling, or these others. What brand did you carry? A. Mohawk.

Q. Where did you purchase those? A. From Mohawk Rubber Company, Akron, Ohio.

Q. Is that the company that you used to work for? A. No, sir. I have never worked for Mohawk Rubber Company.

Q. Who did you work for at Akron? A. Firestone, Goodrich, Goodyear.

Q. Did you ever move for or apply for a franchise to Goodrich or Firestone? A. No, sir.

Q. In other words, you never tried to buy their product? A. No, sir.

(5365) Q. What sort of tire services do you render, Mr. Whiting? A. We fix flat tires of all kinds, do some recapping, and whatever service is necessary to—

Q. Do you do quite a bit of recapping? A. No. That, don't amount to very much. I only recap passenger tires. I have one mold.

Q. Are you in a farm area in Ripley? A. It is.

Q. On these monthly sales of gasoline, does that also include large purchases by farmers for their tractors, and

Howard O. Whiting, for Respondents—Redirect

that sort of thing? A. No. I don't sell any large purchases to farmers.

Q. Do you have access to the Texaco credit card? A. I do.

Q. Do you indicate on the credit card the sale of Seiberling or Mohawk tires, by name? A. No, sir.

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Redirect examination by Mr. Royall:

Q. What do you put on the card, just the size of the tire?
A. Size of the tire.

Q. Has anybody from the Texas Company ever complained to you about your using the credit card? A. No, sir.

(5366) Q. Did you tell Mr. Dias how many competing gasoline stations there were in your town?

• • •

A. There are 16 of us handling gasoline in Ripley.

By Mr. Lorenzen:

Q. This fellow Winters, who you said carries Firestone tires, is he a lessee dealer like you are? A. No.

Q. He owns his own store? A. He owns his own business.

Q. Did I understand from the previous figures you gave to Mr. Dias that your TBA sales in dollar volume are just about the same as your gasoline sales? A. Something near that.

Q. In view of Mr. Dias' question—I didn't want to put this picture in because of the porcelainizing. But is that a picture of your station just prior to this reporcelainizing job which was going on? A. Yes, sir.

(5367) Q. And that was the brick-faced station that you were talking about? A. Yes, sir.

Howard O. Whiting, for Respondents—Recross

Curtis Toothman, for Respondents—Direct

Mr. Lorenzen: I ask to have this document marked as Exhibit 64-C.

Hearing Examiner Kolb: What has that to do with the case?

Mr. Lorenzen: Mr. Dias, I think, argued it was a shabby broken down station. I want to show it was a perfectly good-looking station.

* * *

Recross examination by Mr. Dias:

Q. In connection with the 16 stations handling gas in Ripley, how many of them handle Firestone, do you know?
A. I don't recall but one.

Q. Where is he located in relationship to your station?
(5368) A. He is about two blocks.

Q. Away from yours? A. Yes.

Q. How about Goodrich? Do any of those stations handle Goodrich? A. Not that I know of.

* * *

CURTIS TOOTHMAN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Toothman, will you give your full name and your home address to the reporter? A. Curtis Toothman, 516 Walnut Street, Fairmont, West Virginia.

Q. Are you Mr. C. L. Toothman, whose station is at Fifth and Fairmont, Fairmont, West Virginia? (5369) A. That's right.

Q. That is a name also appearing on Exhibit 35.

Curtis Toothman, for Respondents—Direct

Mr. Lorenzen: Your Honor, may we have a stipulation that Mr. Toothman's testimony with respect to filling out statements for the Government would be substantially the same as that of Mr. Whiting's, and that if we make a request for the production of his statements that Mr. Dias would turn it down and your Honor would sustain his position?

Hearing Examiner Kolb: It is so ordered.

By Mr. Lorenzen:

Q. You are in the business of selling gasoline among other stations? A. Yes, sir.

Q. Where is your station located? A. Fifth Street at Fairmont Avenue.

Q. At Fairmont? A. Fairmont, West Virginia.

Q. How much of a city is Fairmont? A. About 32,000.

Q. Do you have a lease from the Texas Company? A. Yes, I do.

Q. Do you sell Texaco gasoline? A. I do.

Q. Is this one of the leases which renews itself every year? (5370) A. Yes.

Q. Approximately what is the monthly gallonage of your station? A. About 8,000.

Q. Do you handle TBA? A. I do.

Q. A fairly complete line? A. Yes, sir.

Q. Is that your own choice that you handle it? A. Yes.

Q. Why do you handle it? A. Well, I think I can make more, probably a better product.

Q. What sort of tires do you handle? A. I handle Gates.

Q. How long have you been in this station? A. Eighteen years.

Q. For how long a time have you handled Gates? A. Eighteen years. Since I opened up with them.

Curtis Toothman, for Respondents—Direct

Q. So you opened with the Gates tires, and you have been handling it ever since? A. Ever since.

Q. What sort of batteries do you have? A. I have Gates batteries, and a few Delcos, and some Willard.

Q. Do you have any U. S.? (5371) A. Yes, I have some U. S.

Q. Do you have any Firestone or Goodrich batteries? A. No.

Q. Do you have any Firestone or Goodrich tires? A. No.

Q. Have you also handled accessories? A. Yes.

Q. To what extent do you buy those from the Firestone or Goodrich stores? A. I don't buy any from either one of them.

Q. Occasionally do you pick up any? A. Occasionally I pick up two, maybe something like that.

Q. By the way, is there a Firestone store and a Goodrich store in Fairmont? A. Yes.

Q. Right close to you? A. Yes. Firestone is one block away, and Goodrich is about eight blocks away.

Q. From what source do you get your tires? A. I order them out of Pittsburgh.

Q. How far is Pittsburgh from Fairmont? A. About 90 miles. At the warehouse.

Q. Where do you get your Gates batteries? A. Same place.

Q. How about your Delco batteries? (5372) A. I get them right across the street.

Q. And your U. S. batteries? A. Right across the street. Both of them right close together, U. S. and Delco.

Q. Is there a supply point for both, close? A. Yes; they are wholesale houses.

Q. And they are right across the street from you? A. Right across, yes.

Curtis Toothman, for Respondents—Direct

Q. Would you give us the names of some of the places from which you buy your TBA? A. Pittsburgh Auto Equipment and Craig Motors.

Q. Gates Rubber Company? A. I beg your pardon?

Q. The Gates Rubber Company in Pittsburgh is another? A. Yes. They are in Pittsburgh. That is where the warehouse is at.

Q. What is the name of the company—you said Pittsburgh Auto, you bought accessories? A. Pittsburgh Auto. That is right across the street. I mean that is the wholesale house. That is right across the street from where my station is. Pittsburgh Auto Equipment.

Q. That is located in Fairmont? A. In Fairmont, that's right.

Q. Is there another accessories wholesale house at (5373) 120 Jackson Street? A. That is Craig Motors.

Q. You buy from them? A. Yes.

Q. Are those your principal sources of supply? A. Yes.

Q. What sort of fan belts do you handle? A. Gates.

Q. Radiator hoses? A. Gates.

Q. Do you display those? A. I do.

Q. Do you have the regular Gates' racks? A. Regular racks in my bays.

Q. And the Sleeves on the belt? A. Yes.

Q. What about Gates tires, do you have those in stock? A. I keep those in stock. I am a distributor for them. I have about 40 in stock at a time.

Q. And you keep a number of Gates batteries in stock? A. Yes.

Q. About how many of those do you have? A. Well, I buy 25 at a time and when I get down to a small amount I reorder. I usually have about 25 on hand at all times.

(5374) Q. Are you listed in the telephone book under any TBA product? A. Under Gates Tires and Tubes.

Curtis Toothman, for Respondents—Direct

Q. Do you do any advertising? A. Through the radio, yes.

Q. Radio? A. Radio, yes.

Q. Do you feature any TBA products in that advertising? A. I feature tires, tires and batteries.

Q. Gates? A. Gates.

Q. By name? A. That's right.

Q. Has any one from the Texas Company ever told you that your lease would be cancelled or you would be treated badly in any other way if you didn't stop this purchasing of Gates' tires and batteries and these Delco batteries? A. No, they never have.

Q. Has any threat like that been made to you to keep you from displaying or advertising the Gates' tires and batteries? A. No, never has.

Q. Nothing like that has ever been made to you? A. Nothing like that.

Q. Do you feel free to buy any TBA product you wish? (5375) A. I do.

Q. Are most of the customers to whom you sell, local people? A. Yes, they are.

Q. You know them? A. Yes, I know them.

Q. Do they accept your recommendations as to tires? A. They do.

Q. And as to batteries? A. They do.

Q. Do you feel you get a good financial deal on this Gates' setup? A. Yes, I do.

Q. Is that the reason for your handling it? A. Yes, it is.

Q. Do you know that the Texas Company recommends to its dealers the Firestone and Goodrich line of TBA? A. Yes. I knew that. I mean all these years, in our meetings and all, that they recommend these, that they have recommended Goodrich and Firestone tires at our meetings.

Curtis Toothman, for Respondents—Direct

Q. And you have also known that you could buy any place you wanted to if you didn't want to follow the recommendation? A. That's right.

Q. And you acted on that assumption? A. I did.

Q. Has anybody from the Texas Company ever told you that (5376) that was a poor assumption to make, and that in fact you had to buy the Firestone and Goodrich? A. No.

Q. Never? A. Never.

Q. Do you attend dealers meetings? A. I do.

Q. Have you attended such meetings? A. I have.

Q. About how many and for how long a time? A. Well, in the 18 years I don't think I missed a one. We have two a year, spring and fall meetings. I might have but I don't think so.

Q. How many other dealers do you find at those meetings, on the average? A. I have to go to Morgantown, 25 miles. And I would say there are 20 dealers in that area with us.

Q. Do you attend any other meetings? A. Sometimes we have maybe a small meeting around there. There would be a few of them come. But the big meetings are the spring and fall meetings and those are the ones we usually attend.

Q. That is in Morgantown? A. Morgantown, yes.

Q. At those meetings, in your presence, has anyone from the (5377) Texas Company ever said or suggested that the dealers would have to handle some or all of the Firestone or Goodrich line or else they might be subject to lease cancellation or some other unfavorable treatment by the Texas Company? A. No, they haven't, in my presence.

Q. Nothing like that has ever happened? A. No, sir.

Q. Do you get acquainted with the other dealers at those meetings? A. Yes, we do.

Q. Either at the social sessions or after them? A. After them, yes.

Curtis Toothman, for Respondents—Voir Dire.

Q. Do you talk shop with them to some extent? A. We always do. We always have a huddle after the meeting is over with.

Q. Have any dealers ever told you that they have been threatened by the Texas Company with lease cancellation, or any other unfavorable conduct, if they didn't buy some or all of the Firestone or Goodrich line of TBA? A. No.

Q. You do display all of your TBA openly, do you not? A. I do.

Q. And no doubt the Texas salesman knows what kind of product you are handling? A. He knows it.

(5378) Q. I show you two pictures and ask you whether those are snapshots of your station? A. Yes, they are.

Q. Is that just the way your station looked at the time? A. That is the way it looks still today.

Q. It still looks that way today? A. Yes.

Mr. Lorenzen: I ask to have these two pictures marked Respondent's Exhibit 65-A and -B.

. . .

Voir Dire examination, by Mr. Dias:

Q. Do you know when these pictures were taken, Mr. Toothman? A. Those were probably taken about 60 days ago. I just can't recall.

Q. Did you take them? A. No, the salesman took them.

. . .

(5379) *Direct examination by Mr. Lorenzen (resumed):*

Q. Mr. Toothman, these are snapshots and don't show things too clearly. Will you tell me, looking at 65-B, there is a tire sign and it says "Nylon Tires". Is the name "Gates" on that sign? A. The name "Gates" is right over in here; it is pretty hard to see from the snapshot.

Curtis Toothman, for Respondents—Resumed, Direct

Q. You are pointing now to the stand? A. Yes, to the stand. Right in there.

Q. The right-hand side of the stand has "Gates" on it? A. Yes.

Q. Is that a standard Gates' sign? A. It is a standard Gates' sign. They send these new inserts for them, every two or three months I get an insert.

Q. So that the insert with the Gates' name on it is one that is renewed every two or three months? A. That's right.

Q. How about the sign in your window which says, "Nylon Tires"? A. That is "Nylong Tires", that is Gates' tires, and this is your Gates' battery sign here.

Q. Is that a Gates' sign? A. That is a Gates' sign which comes from there. They mail it from Denver.

(5380) Q. And you generally have a sign of that type in your window? A. In the window at all times.

(5381) Q. Underneath the nylon tire sign, there is another one that say "Silver Cobalt"? A. That is cobalt batteries. That is just the name with Gates. That is a heavy duty battery.

Q. That is the advertising— A. (interposing) Advertising of Gates battery.

Q. The slogan for Gates battery? A. Yes.

Q. Do you have signs like that in your window? A. I do.

Q. During the time you have been in the station, has the Texas Company repaired your station for you? A. Yes. They have reserviced the driveway and several other repairs. I mean we have had new pumps. If I recall, maybe two or three sets in that time. And new tanks. I can name several things. New roof and a lot of things that were done.

Curtis Toothman, for Respondents—Cross

Q. When you have requested them to do things for your station, has it been done? A. It has been done, yes, sir.

Q. And at those times has there been any threat made to you (5382) that it wouldn't be done if you didn't stop handling this Gates line? A. None at all.

Q. Nothing like that? A. No.

Q. At these dealers' meetings in Morgantown, about which you have testified, do you get any useful hints about selling TBA? A. Yes. Your Firestone and your Goodrich representatives are also there, and they have a display. The company has a program which they will try to help you sell. I mean your TBA. There is no brand mentioned in the programs themselves. They have been of great help to us.

Q. Do you find that you can use whatever information you get there to sell your Gates line? A. That is right.

Q. And do you use it? A. I do use it.

Q. Do you get any TBA advertising material from the Texas Company? A. Yes. We get several bulletins to put up in your windows, and most of them are no names at all. Just tires or batteries or accessories, no certain name on them. They send them to us and we use them.

Q. And you find that helpful? (5383) A. Sure. I do.

Q. And you read the dealer's magazines? A. Oh, yes.

Q. Do you find anything helpful there? A. Very much.

Q. In connection with selling your TBA? A. Yes.

Cross examination by Mr. Dias:

Q. How many Texaco stations are in town, Mr. Toothman? A. There are two besides mine.

Q. Where are they located with relation to yours? A. One of them is located on the same avenue I am. That is about nine blocks from me. And the other one is located on the east side and I can't tell you his name right now.

Curtis Toothman, for Respondents—Cross

Whitey Clayton is the one on my avenue. The other one is over on Speedway, East Park Avenue. I just can't recall his name.

Q. Do you have any Firestone stores in Fairmont? A. Yes.

Q. How many? A. Well, they have one right below me, and they have—

Q. One? A. One block from my station. Then, they have—

Q. (interposing) Which one is that? (5384) A. That is the main store.

Q. And the address? A. It would be 400 Fairmont Avenue. Fourth Street and Fairmont Avenue. Either one.

Q. And he is one block from your station? A. Yes.

Q. Does he sell gasoline, too? A. Yes.

Q. What does he sell? A. Sterling, I believe, is what they sell.

Q. I didn't get the name. A. Sterling.

Q. Sterling gas? A. Sterling gas, I think, is what they sell.

Q. What about the other two Firestone stores? A. The one down on Jackson Street, and one on the east side, east side of the river.

Q. And they are not very close to your store, your station? A. No, sir.

Q. Do you know what they carry in the way of gasoline? A. The same.

Q. They all carry Sterling? A. Yes.

Q. How about Goodrich? Is there a Goodrich store?

A. The Goodrich store is about eight blocks from me.

(5385) Q. Do they have any stations in town distributing Goodrich products? A. Just the store.

Q. Did you say there were two other Texaco stations?

A. Besides my own, yes.

Curtis Toothman, for Respondents—Cross

Q. Will you tell us—I don't know if it was asked—when you took over that station on your own? A. Mine?

Q. Yes. A. 1940.

Q. 1940? A. Yes, as I recall it.

Q. Is that when you first started operating on your own? A. Yes.

Q. You are sure that wasn't the time that you started in there as an attendant? You worked in a station— A. No. The station—I was there before that.

Q. Before what? A. Before 1940, as an attendant. Then, I bought the station, bought in with a partner, because I have actually been there more than 18 years. Eighteen years is all that the company has got records for.

Q. And prior to 1940, prior to the time that you took over, what products were they handling at that time? A. The same thing.

(5386) Q. Did you say that you buy no products at all from Goodrich or Firestone? A. If I need a tube or something like that, I run down there and get it.

Q. No waxes or polishes? A. No.

Q. You handle garden tractors, too? A. Not any more.

Q. When did you discontinue that? A. Two, three or four years ago.

Q. Where did you buy those? A. I bought those from—got them out of Oakland, Maryland, some of them. Some came from Standard Supply.

Q. Who is Standard Supply? A. Standard Supply is over at Le Havre. That is where they came from, from Le Havre. I can't tell you the address.

Q. That is all right. After these dealer meetings, did you fellows get together and just sort of socialize? A. Yes, sir.

Q. Do you, too, have Schnapps? A. Yes, sir.

Q. It is a wonderful organization. You say it is strictly a social meeting after the meeting is over? A. Yes, it is.

Curtis Toothman, for Respondents—Cross

Q. Can you describe what goes on during the meeting proper? (5387) A. Well, during the meeting they bring out different ways to sell, and how to make money, and the wrong way, and the right way to do it. And we discuss it afterwards.

Q. Do you discuss it during this social gathering? A. Yes, sir.

Q. What else do you discuss during the social meeting? Jokes? A. Yes.

Q. Do you ever talk real business at that time? A. Sometimes. I mean we change ideas—I mean some one is doing something that maybe some of us is missing out on, and it would help us out. It helps out. Just talk general.

Q. What else can you think of that you discuss at that time? Anything in particular? A. No.

Q. Can you give us some idea of your gasoline volume per month? A. It averages about 8,000.

Q. 8,000? A. Yes.

Q. What would that amount to, dollar-wise? A. Profits?

Q. No. Total. 8,000 gallons would represent how many dollars? A. About \$2,000. It is probably more than that.

Q. Approximately 2,000? (5388) A. Yes.

Q. How about your TBA sales? A. They run about four to six hundred dollars a month. I have a variation there.

Q. Have you ever lost any customers because you didn't have Firestone or Goodrich tires? A. Not to my knowledge.

Q. Is your business mainly transient or local? A. It is local. Mostly local.

Vincent Capolupo, for Respondents—Direct

VINCENT CAPOLUPO was called as a witness for Respondent and, after being properly and duly sworn, was examined and testified as follows:

Mr. Dias: Before we go on with this witness, let me state this: I do not stipulate that this man did or did not sign a statement. I think we had better go through that with each witness.

Mr. Lorenzen: I wasn't even going to ask on this man:

Mr. Dias: I didn't want to surprise you.

(5389) *Direct examination by Mr. Lorenzen:*

Q. Would you give your full name and address to the reporter, please? A. Vincent Capolupo, 318 Ridgely Road, Upper Darby, Pennsylvania.

Q. As long as Mr. Dias brought up this point, do you recall giving to Mr. Dias or to anyone from the Federal Trade Commission any statement at all? A. I do not.

Q. Are you in the service station business? A. Yes, sir.

Q. What sort of gasoline do you sell? A. Texaco.

Q. Where is your station located? A. Southeast corner of 63rd and Catherine, Philadelphia.

Q. Do you lease from the Texas Company? A. Yes, sir.

Q. Do you have one of these leases that renews itself each year? A. Yes, sir.

Q. I think you are the dean of the dealers we have had. How long have you been in there? A. Thirty-one years.

Q. You have leased all that time? (5390) A. Yes, sir.

Q. Just so that you won't have to go back in your mind 31 years, let us talk about the last, say, ten years. A. All right.

Vincent Capolupo, for Respondents—Direct

Q. And any questions that I ask you, limit it to the last ten years. You won't have to go back on cross-examination and try to remember things that happened 31 years ago.

Mr. Dias: I object to that statement.

By Mr. Lorenzen:

Q. What is the gasoline gallonage of your station now?

A. About 18,000.

Q. Gallons a month? A. A month.

Q. Do you handle TBA? A. Yes, sir.

Q. Is that your own choice? A. My own choice.

Q. Why do you do it? A. For profit. Extra profit.

Q. Does it make you a profit? A. Yes, sir.

Q. Is it one of these what they call a traffic builder that brings customers to your station? A. I should think it would.

Q. Is that one of the reasons you handle it? (5391)

A. That's right.

Q. Do you know whether the Texas Company recommends any particular line of TBA? A. Yes.

Q. What lines do they recommend? A. Goodrich and Firestone.

Q. Do you know whether it is part of the policy that you have to buy some or all of the Firestone or Goodrich line? A. They say they recommend it, but we generally buy what we want to buy.

Q. And do you feel free to buy anything you want? A. I do. I do buy freely.

Q. And in the course of your [* * *] have you bought anything you wanted? A. Everything I wanted, yes.

Q. Have you, yourself, decided what would be most profitable for Vincent Capolupo? A. That's right. One hundred percent Vincent Vincent Capolupo.

Vincent Capolupo, for Respondents—Direct

Q. Is that the way you decide what TBA to buy? A. That's right.

Q. Tell me, what kind of tires do you have in stock now?

A. At the present time I have Firestone and U. S.

Q. And about how many do you stock of each? A. About nine of each.

(5392) Q. Within the last few years, have you handled other lines? A. I have quite a few lines.

Q. Tell us what other lines you handle? A. I have handled Goodyear, Goodrich, Dunlop, Mohawk, anything that was in the price range for me to buy.

Q. How have you decided what particular line you want to stock at any time? A. Wherever I got a good deal.

Q. And that is the line you buy? A. That is the line I bought.

Q. What kind of batteries do you handle? A. Thor.

Q. Do you stock any of those? A. I have about 14 on hand.

Q. Do you have on hand any other batteries? A. No.

Q. Do you remember there was a time when the Texas Company rehabilitated your station and put in three new bays. A. They built me a brand new station.

Q. They built you a brand new station? A. A brand new three-bay station.

Q. What kind of tires were they handling when they did that for you? A. I was handling Dunlop.

Q. Will you give us the names of the principal suppliers of (5393) TBA from whom you buy? A. Gall, Doar and Sheer, 16th and Fairmont Avenue; and Lancaster Auto Supply, they are at Lancaster Avenue—I think 34th and Lancaster; and Genuine Pars, at 534 North 63rd Street; and I buy from a wagon peddler, Harry Freedman.

Q. I think you didn't mention the name of a company from whom you buy most of your batteries, did you? A. Thor Battery.

Vincent Capolupo, for Respondents—Direct

Q. But what is the name of the company? A. I think it is—it is a funny name.

Q. Premier? A. Premier.

Q. 1147 Rising Sun Avenue? A. Rising Sun Avenue, right.

Q. In Philadelphia.

And from what company do you buy your Dunlop tires when you are handling those? A. Thornton Ford.

(5394) Q. You handle some Firestone tires now, is that right? A. That is right.

Q. Will you tell us the basis for the change which you made from the Dunlops to the Firestones? A. Well, I called the Firestone man up and asked him would he give me a deal on some tires and he said he would, so that is why I put them in.

Q. You got a deal? A. I got a deal.

Q. A good deal? A. A good deal.

Q. Is that the reason you went to the Firestone? A. That is right.

Q. Did anyone from the Texas Company ever threaten to cancel your lease or otherwise treat you badly if you didn't handle some of the Firestone line? A. No, sir.

Q. And no such threat influenced— A. No such threat influenced me.

Q. And no such threat influenced you to buy the Firestone line? A. No.

Q. Do you openly display and handle openly and display whatever type of tires you have in stock? A. At all times.

(5395) Q. At all times? A. At all times.

Q. Have you made any effort to hide them from your Texas salesman? A. No, sir.

Q. Has he known all about them? A. Yes, sir.

Q. Has he ever told you to hide them? A. No, sir.

Vincent Capolupo, for Respondents—Direct

Q. Has he ever threatened you with having your lease cancelled? A. No, sir.

Q. Or that he would get the Texas Company to treat you badly in some other way— A. No, sir.

Q. —if you didn't hide them? A. No, sir.

Q. So you kept them on display? A. At all times.

Q. And you sold them at all times? A. That is right.

Q. And that line of testimony goes for batteries, also?

A. Everything.

Q. All accessories which you handle? A. All accessories.

(5396) Q. By the way, I take it from your answer as to your supply points that you buy no accessories to speak of from Firestone? A. None whatsoever.

Q. You buy all of your accessories from some other supply point? A. That is right.

Q. So all your batteries are from another supply point, all your accessories, and at least half the tires which you stock now? A. That is right.

Q. Can you tell me about, in sales, taking all of your TBA sales together, all your tires and all of your batteries and all of your accessories together, about how much of that business do you think is in accessories and about how much of it do you think is in tires? A. I would say about 75 percent of that would be in accessories, and tires about 25 percent of them.

Q. Tires and batteries together you think— A. About 25 percent.

Q. About a quarter of it? A. Yes.

Q. And three-quarters in accessories? A. That is right.

Q. How do you feel about the quality of the Firestone (5397) products? A. I think they are all right. It is a good quality, premium tire.

Q. But you buy your tires strictly on price? A. That is correct.

Vincent Capolupo, for Respondents—Direct

Q. Have you attended dealers' meetings during the time you are testifying about now? A. Yes, sir.

Q. About how many dealers attend those meetings? A. I would say from thirty to forty.

Q. And about how often are those meetings held? A. They generally hold—twice a year they generally hold their meetings.

Q. You don't have any monthly meetings in Philadelphia? A. Now and then.

Q. Do you attend some of those, too? A. Now and then.

Q. Do you find you get any tips in selling TBA at those meetings? A. I think we do, a lot of them.

Q. Can you use those on the sale of TBA, whether it is Firestone or Goodrich? A. That is right.

Q. You can use it on all your TBA? A. That is right.

(5398) Q. Do you get any other help in merchandising your TBA? A. Well, the salesman gives ideas in helping us out.

Q. Do you ever get a chance to look at the dealers' magazine? A. Yes, sir.

Q. What about that? Do you find that— A. That is a helpful thing, too.

Q. At these dealer meetings do you get acquainted with other dealers? A. Quite a few of them.

Q. In fact, you have been a president of the Pennsylvania Retailers Association, haven't you? A. That is right.

Q. And you have had a wide acquaintance with dealers that way? A. That is right, quite a few.

Q. In those meetings, in your presence, has anyone from the Texas Company ever threatened you or any of the other dealers with lease cancellation or with any other unfavorable conduct if you didn't handle some or all of the Firestone and Goodrich lines? A. No.

Vincent Capolupo, for Respondents—Direct

Q. Nothing like that has ever happened? A. Nothing like that.

Q. You socialize with these dealers, do you? A. That is right.

(5399) Q. And both at the meetings and at other times? A. That is right.

Q. When you have met any of these dealers? A. That is right.

Q. You have met them on other occasions, too; is that right? A. That is right.

Q. On any of these occasions, whether at the meetings or on other occasions, has any dealer ever complained to you that anyone from the Texas Company has threatened to cancel his lease or has threatened to treat him badly in some other way— A. No.

Q. —if he didn't handle some or all of the Firestone or Goodrich lines? A. No, sir.

Q. Nothing like that has ever happened? A. Nothing like that.

Q. Mr. Capolupo, have you had any offers from any other companies to become a dealer for them? A. I did.

Q. Did you turn them down? A. Yes, sir.

Q. Do you know whether the gasoline distributing companies have a tough time in your neighborhood getting dealers for their stations? (5400) A. Quite a few of them.

Q. Have a hard time getting them? A. That is right.

Q. So that there are more stations than there are dealers to take care of them? A. You are right.

Q. Do you display your Thor batteries openly? A. Yes, sir.

Q. Have you ever made any effort to hide them? A. No.

Q. Do you display your U. S. tires openly? A. Yes, sir.

Vincent Capolupo, for Respondents—Cross

Q. No effort to hide them? A. No effort whatsoever.

Q. They are up there in the tire rack alongside of Firestone? A. That is right. As long as you walk right in there you can see them, right in the place.

Q. And when you had the Dunlop tires, was it the same situation? A. Same situation.

Q. And the same with other kinds of tires that you have handled? A. That is right.

Q. Do you feel entirely free to buy any kind of TBA you think is best? (5401) A. That is correct.

Q. Tell me, about what proportion of your sales, tire sales, do you figure is out of stock and what proportion do you pick up? A. Oh, about sixty percent.

Q. Is what you pick up? A. Pick up.

Q. And only about forty percent of your tires you sell from stock? A. From stock.

Q. When you pick up do you pick up whatever kind you are able to sell to the customer? A. Whatever the customer suggests, I get for them.

Q. You get it? A. I get it.

Q. That may be Goodyear? A. It may be any of them.

Q. Or Goodrich? A. It may be any tire.

Q. Or any of them? A. It may be any of them.

Q. And it is any of them. A. Yes.

(5402) Cross examination by Mr. Dias:

Q. Mr. Capolupo, what is your dollar volume of gasoline sales per month? Do you have any idea? A. Not offhand.

Q. Sir? A. Not offhand.

Q. Do you have any idea what your dollar volume of TBA sales are per month? A. I would say anywhere from four to six hundred.

Vincent Capolupo, for Respondents—Cross

Q. How much? A. Four hundred to six hundred dollars.

Q. Are your gasoline sales more than that? A. It could be.

Q. It could be? A. Yes.

Q. Do you mean it also might be that you sell just four hundred to six hundred dollars worth of gasoline per month? A. No. It is eighteen thousand per month I sell. I hadn't figured it down.

Q. Can you give us a rough idea of what 18,000 gallons would sell for? A. I would say close to \$2,200.

Q. When did you become disenchanted with Goodrich? Didn't you carry that for many years? (5403) A. I had them fourteen years.

Q. What happened? A. Well, the price situation.

Q. And when you carried Goodrich didn't you carry their full line of tires, batteries, and accessories? A. No, just the tires and batteries.

Q. Tires and batteries. If you will, try to recall what came up then and what you did about it. A. That is too far back to find out what I did. We just had a disagreement, I guess, and I just swung out and got a better price on the outside.

Q. Did you mention that disagreement to Texaco in any way? A. Yes.

Q. What did they try to do about it? A. They told me to use my own opinion, to do what I wished.

Q. Did they attempt to get you a better price from the Goodrich people? A. At that time they might have.

Q. Who was the Goodrich distributor at that time, do you know? A. No, not offhand.

Q. You dealt with him for fourteen years? A. Yes.

Mr. Lorenzen: Did you fix a date, Mr. Dias, as to when this was supposed to have happened?

Vincent Capolupo, for Respondents—Cross

(5404) Mr. Dias: No, I haven't yet. I don't know when it happened.

By Mr. Dias:

Q. Can you tell us when this happened? A. No, not offhand I couldn't.

Q. But you did deal with him for fourteen years? A. Yes.

Q. And at one time you thought they were the best in the market? A. I still think they are. The Firestone is a good tire.

Q. And is it for the same reason that you do not buy Goodrich now? Or do you buy Goodrich now? A. I buy Goodrich now. When a customer requests a Goodrich tire, I will get a Goodrich tire.

Q. And these tires that you actually have in the station, you say they are Firestone and U. S.? A. Yes.

Q. How many Firestone do you think you carry at one time? A. Nine.

Q. And U. S.? A. About nine.

Q. And is that your normal stock? A. That is the normal stock.

Q. When did this shortage of dealers commence in Philadelphia, Mr. Capolupo, do you know? (5405) A. I would say it started about a year or so.

Q. A year or so ago? A. Yes..

Q. And when did you receive this offer from another oil company? A. Oh, about a year.

Q. And has that shortage of dealers continued since then? A. As far as I know.

Q. Do you have any idea what caused that? A. I really don't.

Mr. Dias: I have nothing further.

Vincent Capolupo, for Respondents—Redirect

James F. McCue, for Respondents—Direct

Redirect examination by Mr. Lorenzen:

Q. On this gasoline volume, you say you sold 18,000 gallons? A. Yes.

Q. In order to get the dollar volume, you multiply—
A. I just recall, I made an error. It is close to \$5,000.

Q. It is close to \$5,000? A. I just tried to iron things in my memory now, as I went along.

* * *

(5406) JAMES F. McCUE was called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Royall:

Q. Mr. McCue, you are a Texaco dealer? A. Yes, sir.

Q. What is your full name? A. James F. McCue.

Q. Where is the station? A. Walnut and Chestnut Streets, West Chester, Pennsylvania.

Q. Are you a lessee under the regular form of annual lease? A. Yes, sir.

Q. How long have you been a lessee at that station?

A. It will be 26 years the 9th of next January.

Q. What is your average gallonage per month? A. About 24,000.

Q. What are your TBA sales now? A. Do you mean in dollars?

Q. Yes. A. We average about \$10,500 a month. I would say \$3,500 probably is TBA.

Q. You handle tires, batteries, and accessories? A. Yes, sir.

(5407) Q. And what brand of tires does Texas recommend? A. They recommend Firestone and Goodrich.

James F. McCue, for Respondents—Direct

Q. And what brand of tires do you carry? A. That is what we carry, both.

Q. Firestone and Goodrich.

Of your TBA, what percentage would you say in dollars is tires? A. In TBA?

Q. I mean of the total TBA, what part of it would be tires? A. I would say it might average eight or nine hundred dollars a month.

Q. In dollars? A. In dollars.

Q. In percentage what would it be? A. In percentage?

Q. Yes. A. Tires would run around 50 to 55 percent.

Q. And the batteries? A. I would say 15—10 to 15.

Q. And the rest of it would be accessories? A. Accessories.

Q. Which of those has the greatest turnover? Accessories? A. Accessories.

Q. Why do you buy Firestone and Goodrich tires? A. Well, national acceptance, and I have been a Goodrich (5408) dealer for 23 years, and people who don't buy gas from me come there for tires because I am known as a Goodrich dealer.

Q. Did you ever sell other tires? A. Well, one time I handled Century for a short time, but I had a lot of trouble and gave them up.

Q. Did you ever handle US tires? A. Well, if some one wants them, I will get them the tires, if they insist on them.

Q. Is it your experience that Goodrich and Firestone tires attract customers better than others? A. They do.

Q. Are you familiar with the policy of the Texas Company with reference to the independence of the dealer? A. Yes, sir.

Q. Do you feel that you are entirely free to select or change the brand of tires and the people from which you buy? A. I feel that way, yes.

James F. McCue, for Respondents—Direct

Q. What batteries do you buy? A. Well, we buy Delco and Bowers.

Q. Do you buy from Goodrich or Firestone? A. Unless someone insists on it and wants Goodrich and nothing else.

Q. Do you think you can sell Delco batteries better than any others to your customers? A. It has worked out that way.

(5409) Q. From whom do you buy accessories? A. Well, we buy from Gaul, Derr, and Shearer in Philadelphia, and West Chester Automotive.

Q. Do you buy Bowes Seal Fast? A. Yes. That is a truck, a peddler who comes around. We buy from him.

Q. Do you buy battery cables— A. And accessories.

Q. Terrell Accessories Auto Business Supply? A. He is out of business.

Q. Wiley— A. Wiley Motors is a garage. We do favors for them. If we are short something, and the others are closed, we get them there.

Q. What kind of fan belts and radiator hoses do you carry? A. We handle Gates and Voit.

Q. You buy those from West Chester— A. Aviation.

Q. —Automotive? A. Aviation Company.

Q. What do you buy from Gaul, Derr, and Shearer? A. Fram filters and brake fluid and almost all types of accessories.

Q. Do you buy from eight or nine different people? A. Yes, sir.

(5410) Q. Both your tires and your batteries and accessories are on display? A. Yes, they are on display at all times.

Q. Can they be seen by the Texas people and are they seen by them? A. Yes, sir.

Q. Have you ever received any complaint or threat from the Texas people about your handling non-sponsored batteries and accessories? A. No.

James F. McCue, for Respondents—Cross

Q. Has there ever been any effort to force you to do so?
A. Never.

Q. Have you ever committed yourself to Texas to buy only sponsored goods? A. No, sir.

Q. Or to buy any particular quantity of them? A. No.

Q. Does the sale of TBA give you a profit? A. It certainly does.

Q. Does the carrying of TBA contribute to better gasoline sales? A. If you don't handle things, customers will go where they can get them.

Q. Does Texas help you any in connection with your sale of TBA? A. Well, at meetings it is discussed and they furnish (5411) follow-up cards for lubrication system, and different helps, Texaco dealer magazine.

Q. Are those all helpful to you and utilized by you in non-sponsored as well as sponsored goods? A. Yes, sir.

Q. Do you attend the Texas Company meetings? A. Well, if I don't go, my partner goes. There is always one of us there.

Q. Did you ever hear at any of those meetings any complaint of any dealer as to Texas forcing them or requiring them to buy sponsored goods? A. No.

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Cross examination by Mr. Dias:

Q. How many of these meetings are there a year? A. They run two a year. Sometimes the salesman will have a meeting, maybe two or three times, or five times.

Q. How many of those meetings have you attended?
A. I used to always attend them until I got into this partnership, with this younger fellow. I usually send him because he is going to take over one of these days.

Q. When did you get this partner? A. January 1, 19—two years ago.

James F. McCue, for Respondents—Cross

(5412) Q. So you haven't attended any meetings since then? A. Yes, I have been to a meeting since then.

Q. How many? A. Just one.

Q. Just one? A. Yes.

Q. Do you socialize, too, after these meetings? A. Oh, yes.

Q. You mentioned this station or this supply, this exchange of favors with this garage, was it? A. Yes. Richard Connor. He is the new Firestone distributor. He had an Atlantic station on the next corner and gave that up and became a Firestone distributor.

Q. And do you purchase much from Connor? A. Last month our purchases from him were \$475, and from Goodrich it was \$480. So it is about half.

Q. And do you have some idea about the amount he purchases from other than Goodrich or Firestone? A. Well, just roughly I would say it will run maybe seven or eight hundred dollars.

Q. For all the other supplies? A. All the other supplies.

Q. Of the other suppliers, who gets the lion's share? A. Gaul, Derr, and Shearer, and Aviation.

Q. Can you give us some idea of the volume of business with (5413) Gaul, Derr, and Shearer? A. Well, their monthly bill usually runs—it runs sometimes as high as four or five hundred dollars, sometimes fifty dollars.

Q. What about last month? A. Last month I would say it was about \$160.

Q. What is it that you buy now from Firestone and Goodrich? A. Tires and recapping. That is all.

Q. No accessories? A. No accessories.

Q. How often does the Texaco salesman come around to your station? A. He lives in West Chester, so he is around quite often. I would say he might be in three to

James F. McCue, for Respondents—Cross

four or five times a week. I mean he doesn't—he just stops in, maybe buys gas or talks.

Q. Have you always had that same salesman? A. He has been there about five years.

Q. For salesmen who do not live within the neighborhood, how often would they call on you? A. Well, once in two weeks, maybe.

Q. What do they do? Do they sell you gasoline or just check on your station or what? A. Do you mean the salesmen?

Q. Yes, the Texaco salesmen. (5414) A. No, they just talk with us about, if they have anything on their mind, maybe some repair work has been done, maybe he will have a slip that I will have to sign Okaying it, or maybe just talk about baseball or anything.

Q. More socializing? A. No, it is not socializing. The way he says, "If you have no complaints, why talk about it?"

Q. How often does the next echelon of Texaco personnel come around? A. The top?

Q. Not necessarily the top. Say the next step above. A. I rarely see them, unless at a meeting.

Q. And at these meetings that you have attended, you have seen Firestone and Goodrich personnel? A. I have seen them there. They just are introduced and that is all.

Q. They have never taken part? A. They never talk.

Q. They never have? A. No, sir.

Q. They haven't? A. Not in recent years. I would say in the last fifteen years.

(5416) Mr. Lorenzen: This morning, at the time we made a motion for the production of any statements in the possession of counsel supporting the complaint, which statements were made by wit-

William Clyde Sizemore, for Respondents—Direct

nesses whose names had been supplied to counsel supporting the complaint, we delivered a written copy of that motion and a memorandum in support of it. At this time we would like formally to incorporate that written motion in the record.

Hearing Examiner Kolb: The motion may be filed with the Secretary of the Commission. The order of the Hearing Examiner previously made on the oral motion will stand as to the written notice, denying the motion.

(5417) WILLIAM CLYDE SIZEMORE was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Sizemore, will you give your full name and your home address to the reporter? A. William Clyde Sizemore, 308 National Highway, Thomasville, North Carolina.

Q. Mr. Sizemore, are you in the service station business? A. Yes, sir.

Q. What sort of gasoline do you sell? A. Texaco.

Q. What is the location of your station? A. Sixty East Main Street, Thomasville, North Carolina.

Q. How long have you been there? A. I have been there 12 years.

Q. About how much of a city is Thomasville? A. It has a population of around 16,000.

Q. Does it have a lot of other service stations in the city? A. Yes, sir.

Q. You said you had been there 12 years? A. Yes, sir.

Q. Under lease?

(5418) Q. That lease is from the Texas Company? A. Yes, sir.

William Clyde Sizemore, for Respondents—Direct

Q. And is it one of these leases which renews itself each year? A. Yes, sir.

Q. Do you remember when you first went in there did you have a partner? A. Yes, sir.

Q. So that the 12 years covered either the time when you had a partnership or when you were in it by yourself? A. Yes, sir.

Q. And you have been in it continuously for the whole 12 years? A. Yes, sir.

Q. Do you handle TBA? A. Yes, sir.

Q. And have you handled it from the beginning? A. Yes, sir.

Q. Why did you handle TBA? A. We handled TBA because this day and time you have to carry supplies of products to meet the demand of the customer. It also brings in new customers and builds up your gasoline sales also.

Q. You decided to handle that on your own account? A. Yes, sir.

(5419) Q. And for those reasons? A. That's right.

Q. With what kind of TBA did you open your station, speaking now particularly of tires and batteries? A. I am not sure when we first opened exactly what we did have. We had two or three different brands. We hadn't decided on anything at that particular time, just anything. They were kind of hard to get ahold of then. We would take most anything we could get. We did sell three or four different brand tires.

Q. Have you any recollection of what kind of tires you had at that time? A. Well, we sold some Goodyear, U. S. Royal, and Dunlop, I think it was.

Q. And how about batteries? A. We have handled Autolite batteries from the beginning.

Q. From the beginning? A. Yes, sir.

William Clyde Sizemore, for Respondents—Direct

Q. What kind of tires do you handle now? A. Gillette.

Q. Exclusively? A. Yes, sir.

Q. How many do you have in stock? A. I have probably

35.

Q. And how many Autolite batteries do you have in stock? (5420) A. I think I have eight at present.

Q. Do you have any others? A. No, sir.

Q. You are Mr. W. C. Sizemore, of Main and Cemetery Streets, in Thomasville? A. Yes, sir.

Q. That is how it is listed in Exhibit 35. A. Yes, sir.

Q. For how long now have you had these Gillette tires?
A. I think we have handled Gillette approximately ten years. I think that's right.

Q. Tell me, are most of your customers transient, or are most of them local? A. Local.

Q. Are the customers mostly people you know? A. Yes, sir.

Q. And are they willing to accept your recommendation as to tires? A. Yes, sir.

Q. And you do recommend Gillette? A. Yes, sir.

Q. Do you have a good deal with the Gillette Company?
A. Yes, sir; that is the reason I have them.

Q. You figure you make more money on selling the Gillette's than any other kind? (5421) A. Yes, sir.

Q. And is that why you handle them? A. Yes, sir.

Q. Did you understand that that way of buying TBA was in accordance with the Texas Company's TBA policy?
A. Yes, sir.

Q. Do you also know whether or not the Texas Company recommends to its dealers the Firestone and Goodrich lines?
A. Yes, sir; they do.

Q. You do know that? A. Yes, sir.

Q. But in spite of that you understood that you could buy what you wanted? A. Yes, sir.

William Clyde Sizemore, for Respondents—Direct

Q. And you have done so? A. Yes, sir.

Q. From what source do you buy your accessories? A. I get part of it from Carolina Supply Company, Stokes Auto Parts, Myers Auto Parts, in Lexington, and that is about the main points where I get them from.

Q. None of those are Firestone or Goodrich? A. No, sir.

Q. You don't buy any Firestone or Goodrich? A. No, sir.

Q. Do you have Firestone or Goodrich supply points in Thomasville? (5422) A. Yes, sir.

Q. From where do you get your Gillette tires? A. Montgomery and Aldrich, in Durham.

Q. How far away is that? A. It is about 70 miles.

Q. Do you have any Delco batteries in the station now? A. No, sir. We have a pickup point where we pick up Douglas and Delco.

Q. Douglas and Delco? A. Douglas and Delco.

Q. You sell some of those? A. Yes, sir; we sell quite a few of them because they are handled by Auto Supply in town, and we can pick them up day or night.

Q. Do you display all of your TBA? A. Yes, sir.

Q. Openly? A. Yes, sir.

Q. Do you have any signs advertising the type of TBA you sell? A. Yes, sir.

Q. What do you have? A. I have decals across the front of the station, and that tells of Gillette tires, tubes, and then I have inside of my station a rack for filters, and then I have my tires displayed (5423) on racks inside.

Q. Do they have the Gillette name on them? A. Yes, sir. And then, I have an Autolite rack with batteries on it.

Q. And those Autolite batteries have the name on it? A. Yes, sir.

William Clyde Sizemore, for Respondents—Direct

Mr. Lorenzen: May I have these three pictures marked as Exhibit 66-A, -B, and -C.

(Whereupon, the documents referred to were marked Respondents' Exhibit 66-A through -C for identification.)

By Mr. Lorenzen:

Q. Do you recognize these pictures, Exhibits 66-A, -B, and -C? A. Yes, sir.

Q. Do they show your station? A. Yes, sir.

Q. Do they show parts of your station? A. Yes, sir.

Q. Do they show the Gillette decals about which you have testified? A. Yes, sir.

Q. And the tires and the Autolite batteries? A. Yes, sir.

Q. Is this substantially the way your station looks today? A. Yes, sir.

(5424) Q. Was any special preparation made in connection with taking these pictures? A. No, sir.

Q. That is just the way your station happened to look the day the photographer came in? A. Yes, sir.

Q. And how long ago were these pictures taken? A. They was made last week.

Q. Last week? A. Yes, sir.

(5425) Q. Did anyone from the Texas Company ever tell you that they would cancel your lease or treat you badly in any other way if you didn't stop handling these Gillette tires and Autolite batteries and accessories? A. No, sir.

Q. Has anybody ever told you to hide these TBA items or to take down the signs? A. No, sir.

Q. Nothing like that— A. (interposing) No, sir.

William Clyde Sizemore, for Respondents—Direct

Q. (continuing)—has ever happened to you? A. No, sir.

Q. Do the Firestone and Goodrich supply point salesmen call on you on occasion? A. They have in the past, but they don't any more.

Q. You have discouraged them, haven't you? A. Yes, sir.

Q. So they have stopped calling on you? (5426) A. Yes, sir.

Q. Do you find that the Texas Company is of any help to you in marketing your TBA? A. Yes, sir.

Q. What sort of help do you get? A. Well, we get help from dealers' meetings and we have the salesmen coming into the territory and helping us with displays, and arranging our merchandise, and then we get the dealers' magazine each month.

Q. And all of that is of help to you in selling Gillette tires? A. Yes, sir.

Q. And Autolite batteries and your accessories? A. Yes, sir.

Q. Where do you have these dealers' meetings? A. We have them in our district. The bulk plant manager usually will call three or four meetings a year. We have salesmen or representatives of the company will come in and show a film and talk to us. Then, we have one what we call the big dealers' meeting, spring dealers' meeting, usually held in Winston-Salem, and all the dealers throughout the district will be there.

Q. How many dealers do you think come to these meetings that you have at the bulk plant? A. We usually have anywhere from eight to fourteen, fifteen (5427) sometimes.

Q. And how many dealers are at the meeting in Winston-Salem? A. I would say approximately 100 to 125.

William Clyde Sizemore, for Respondents—Direct

Q. Are you on the Dealers' Advisory Council? A. Yes, sir.

Q. That is an advisory council of Texas dealers? A. Yes, sir.

Q. Do you have meetings of that council somewhere? A. Yes, sir.

Q. Where is that? A. We meet in Charlotte.

Q. How many other dealers attend those meetings? A. There are ten others. There are eleven of us, I think in all, on the council.

Q. Do you get pretty well acquainted with the other dealers that you meet at the bulk plant meetings? A. Yes, sir.

Q. Do you know those pretty well? A. Yes, sir.

Q. Do you know the dealers at the Winston-Salem meetings fairly well? A. We know quite a few of them.

Q. Quite a few of them? A. Yes, sir.

Q. How about the dealers on the council with you? (5428) A. Yes, sir.

Q. Do you know those pretty well? A. Yes, sir.

Q. Have you had occasion to talk to them and talk shop with them? A. Yes, sir.

Q. At any time have any of these Texaco dealers complained to you or told you that anyone from the Texas Company has made a threat to cancel their lease or to treat them badly in some other way if they didn't handle some or all of the Firestone or Goodrich lines? A. No, sir.

Q. Nothing like that has ever happened? A. No, sir.

Q. And has any threat of that kind, lease cancellation or any other kind of bad treatment, been made in your presence at any of these dealer meetings which you have attended? A. No, sir.

(5429) Q. Tell me, are you listed in any telephone book or city directory or anything in connection with the

William Clyde Sizemore, for Respondents—Cross

type of TBA products which you handle? A. Yes, sir. I am listed in the City Directory.

Q. In connection with what kind of products? A. Gillette.

Q. Gillette? A. Yes, sir.

* * *

Cross examination by Mr. Dias:

* * *

(5430) Q. That is, then, the date. You don't recall whether it was 1950 or 1951 that you took over? A. I think it was '50. I am not sure.

Q. 1950 or 1951, at any rate you operated the station by yourself? A. Yes, sir.

Q. This 12 years in the station then commenced as of the time that you became a partner with Mr. Stinson; is that correct? A. Yes, sir; that is correct.

Q. Were you employed at the station prior to that time? A. No, sir. The station was closed and we opened it. Mr. Stinson got the lease on it and opened the station and I went in as a partner.

Q. At the time it was opened? A. Yes, sir.

Q. At that time, in 1946, what TBA did you carry then? A. At that time, we, I think we got the Auto-lite battery right off, but we couldn't—there was a shortage of tires and we had to take just what we could get. We would get, sometimes we would get ahold of U. S. Royal and Dunlop, I think it was, and any two or three we could pick up like that.

Q. That ties in with your previous testimony as to the scarcity of products, as to what you started buying when you first went into the station? (5431) A. Yes, sir.

Q. That ran from 1946 on. Is there a Firestone distributor in town? A. Yes, sir.

William Clyde Sizemore, for Respondents—Cross

Q. Can you give us his name? A. Frank Cranford.

Q. Are there any Firestone stores in town? A. Yes, sir. That is the Firestone store and the distributor there; yes, sir.

Q. Does he handle gasoline, too? A. Well, he owns an Esso station besides the store, and runs it. They run separate.

Q. Is that the only Firestone distributor in the town of Thomasville? A. Yes, sir; the only one.

Q. How about Goodrich? A. We have a Goodrich store.

Q. And where is that located? A. It is located on Salem Street, two blocks from my station.

Q. Goodrich is two blocks from your station? A. Yes, sir.

Q. How far is Firestone from your station? A. It is in the same block.

Q. In the same block? (5432) A. Yes, sir.

Q. Do you ever pick up Goodrich or Firestone tires at the request of a customer? A. No, sir. I never have a customer to request them.

Q. Because of the locality of the Firestone and Goodrich stores? A. Yes, sir.

. . .

(5433) Q. Who manufactures Gillette? A. It is the U. S. Rubber Company.

Q. Are there any other Texaco stations in town? A. Yes, sir.

Q. How many? A. Just one.

Q. Just one? A. Other than mine.

Q. Sir? A. Just one other than mine.

Q. Where is he located? A. He is located on the same street that I am located on, but it is several blocks out.

Q. Do you know him at all? A. Yes, sir.

William Clyde Sizemore, for Respondents—Cross

Q. Do you know what kind of TBA he carries? A. Yes, sir. He carries the Exide battery and the Goodyear tire.

Q. Does he own his own station? A. Yes, sir.

Q. How often did the Goodrich and Firestone salesmen call on you? A. When they did call on me they would come, they would on (5434) an average come once every two weeks.

Q. How long ago was that? A. That is about five years ago.

Q. Is that long ago? A. Yes, sir.

Q. You said you discouraged them. How did you discourage them? Did you order them out of the station? A. No, sir. We would discuss the prices that I was buying my line of tires for, compared to theirs and then I would tell them I couldn't handle them because their price was out of line and I could get a better deal with the Gillette, and could offer them to my customers at a cheaper price, and that is what I was after.

Q. That was five years ago? A. Yes, sir.

Q. And they don't call on you any more? A. No, sir.

Q. These dealer meetings at the bulk plants, how often are they conducted? A. I don't know. Sometimes we will have one about every three months. They usually average about three or four a year.

Q. They are not regularly scheduled? A. No, sir.

Q. How do you know when there is going to be a meeting? (5435) A. They call. Some of the personnel from the bulk plants will call us and tell us that there is going to be a dealer meeting. We don't have them at the bulk plant. They are different places. Sometimes we will have them at restaurants and sometimes at the Elks Club and places like that.

Q. Always in Thomasville? A. No, sir. In High Point.

Q. How far is that— A. Seven miles.

William Clyde Sizemore, for Respondents—Redirect

Q. What is the purpose of those meetings? A. Different things. Sometimes they will have a film on the way to run the station, like the "Clean-up" film, maybe, about how to keep your station clean and points to go about keeping it clean, and registered rest rooms, and different things like that. And maybe they will run one on boosting your sales on oil. Just different things like that to go along with the program of spring and fall. Sometimes they will be on "PT anti-freeze," to boost the sale of that.

Q. And you have attended all of those, have you? A. No, sir. I attend most of them. Occasionally I miss one. Very seldom.

Q. You say roughly they are about three a year? A. Yes, sir.

Q. Has the other dealer in town attended those meetings? A. He attended some. He doesn't attend as often as I do.

(5436) Q. Are there any other retail sources for Goodrich and Firestone products, other than those two places that you mentioned, the Firestone store and the Goodrich store? A. Not that I know of.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. This other dealer who doesn't attend these meetings as faithfully as you do, is he on the dealers' Council? A. No, sir.

Q. You said something about the fact that the Goodrich and Firestone stores were near you was a reason why customers didn't ask you for the Firestone and Goodrich tires, in answer to Mr. Dias' question; is that right? A. I didn't—if I answered it that way, I didn't mean it that way. I said the reason that they didn't ask me, or that they did—that I didn't have any customers ask me for the Firestone

William Clyde Sizemore, for Respondents—Recross

and Goodrich tires, and the way I understood the question, he said it was because the stores were near. In other words, they could go to the store and buy them, other than coming to my station.

Q. Are there some of your gasoline customers who do that? Is that how you know about it? A. No, sir. I don't know that they do. I just said they didn't come and ask me for them. When they come to me for (5437) tires, I always sell them Gillette's.

Q. Then you don't know why you are successful in selling Gillette and they don't go and get Firestone or Goodrich? A. No, I don't know that. I never asked them.

Q. You don't know in general why people don't ask you for Firestone and Goodrich tires, do you? A. No, sir.

Mr. Lorenzen: That is all.

Recross examination by Mr. Diàs:

Q. Have you ever had occasion to pick up a Firestone or Goodrich tire for a customer? A. Yes, sir; I have.

Q. Was that for a local customer or a transient? A. Local.

Q. How did your price compare with the Firestone and Goodrich stores? Which was it, Firestone or Goodrich?

A. The only time I pick them up is when I won't have one in stock, the size someone wants, and they have to have the tire, say, that day, and their price will vary around \$3.00 more than what I can get the Gillette for.

Q. You said "one in stock." Do you mean the Firestone in stock or the Gillette in stock? A. No, sir; I don't stock anything but Gillette's.

Q. So that pricewise your Gillette is cheaper than the (5438) Firestone; is that correct? A. Yes, sir.

Charles T. Llewellyn, for Respondents—Direct

(5439) CHARLES T. LLEWELLYN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and address to the reporter? A. Charles T. Llewellyn, 52 West Ninth Street, Chester, Pennsylvania.

Q. You are in the business of selling gasoline, are you? A. Yes, sir.

Q. You have a service station? A. Yes, sir.

Q. Where is it located? A. At 52 West Ninth Street, Chester, Pennsylvania.

Q. What kind of gasoline do you sell? A. Texaco.

Q. Do you have a lease with the Texaco Company? A. Yes, sir.

Q. And is that one of these leases that renews itself each year? A. Yes, sir.

Q. How long have you been a lessee of the Texas Company? A. About thirteen years.

(5440) Q. About what is the gasoline volume of your station now? A. Between twenty and twenty-five thousand. It fluctuates. That is gallons.

Q. Seasonally do you get as high as 30,000 gallons a month? A. Well, if we can scare up a right-sized price war, we can make 80,000. About twenty to twenty-five. It stays around that throughout the entire year. That is normal gallonage.

Q. Do you handle TBA? A. Yes, sir.

Q. Have you handled TBA since you have been at the station? A. I could not be without TBA.

Q. So you have had it? A. Yes, sir.

Q. When you say you couldn't operate without it, you mean financially? A. Dollars and cents.

Charles T. Llewellyn for Respondents—Direct

Q. You need TBA? A. Definitely.

Q. In the time that you have been in this station can you tell me have you handled all kinds of tires? A. Yes, sir.

Q. And stocked all kinds? A. Yes, sir.

Q. Give us the names of some of the makes of tires that you have stocked there. (5441) A. You mean other than the more accepted brands?

Q. Do you mean by "more accepted" Goodyear, Firestone, or Goodrich, or US? A. Yes, sir.

Q. Have you handled all of those? A. No, sir.

Q. Which ones have you handled? A. I have handled mostly Goodrich.

Q. And what others in addition to Goodrich? A. I handled some Firestone, and I have handled some Dunlop. In fact, I have Dunlop in stock now. I have Mohawk in stock at the moment, along with some Firestone and Goodrich.

Q. Have you ever handled any Cooper tires? A. I had one consignment of ten, and I didn't have a very good end result with them, and so that was it. I never handled but ten of them. I discontinued it.

Q. What was the matter with them? What was your experience with those Coopers? A. Price-wise my experience was good, but profit-wise and holding up the station quality, the tires were bad, definitely bad. And I just discontinued handling them.

Q. You mean they wouldn't stand up? A. That is correct, sir.

Q. Did that take your customers away from you or make them unhappy? (5442) A. Well, I didn't make my customers unhappy because I make good on anything that I can't get an adjustment through. I do my own adjusting. I won't see the customer losing anything if I can help it.

Charles T. Llewellyn, for Respondents—Direct

Q. Did this Cooper tire venture cost you money out of your own pocket? A. Oh, yes, definitely.

Q. So you haven't handled Cooper since? A. No. I don't even like to hear the word.

Q. At one time did you handle any General tires? A. I had a General franchise for a year and a half, approximately a year and a half.

Q. That is the result of a disagreement that you had with Goodrich?

Mr. Dias: Your Honor, I object to leading questions.

Mr. Lorenzen: I withdraw that.

By Mr. Lorenzen:

Q. Did you switch from Goodrich to General at that time? A. Yes, sir. I had the Goodrich line and I ceased handling the tires and I sent the entire stock that I had at the time back to the company and got a credit for them. About between \$45,000 and \$46,000 worth of rubber.

Q. You sent it all back to Goodrich? A. Right in their lap, sir.

Q. Did the Texas Company know about that? (5443)
A. Yes, they did.

Q. What did they do about it? A. They agreed with me. They said there was no justification for the thing that caused the difference between the Goodrich and I, and they sustained it and said that the moment—unless there could be something done in the future to straighten the matter out, they were definitely in accord with what I had done.

Q. What was the difficulty between you and Goodrich? A. Well, they placed an A dealer, as we called it at that time—they had several categories of dealers, whereby if you purchased tires to a certain degree and volume you

Charles T. Llewellyn, for Respondents—Direct

got a certain price under the so-called key deal. If you did a better job than that you had what they called an A deal, which was so many more percentage points under the key deal. They placed a distributorship three doors from my station, my location, and I just didn't see the sense of beating my head in and not making any money. So I discontinued the stocking of the tire. I wouldn't even handle it. If some one wanted to buy it, I wouldn't even talk about it. I would try to persuade them to buy another tire, a General.

Q. And the Texas Company knew about it? A. They knew it. I had the display items on the island. I had their tire stand. However, my salesman, who is interested in Goodrich and Firestone because that is our company's policy, (5444) said nothing to me. He just said, "It may be that we may be able to get it straightened out with them later on," and eventually that so happened.

Q. Eventually it did get straightened out? A. Yes, sir. They moved their location to another part of the city.

Q. And you say that was about a year or a year and a half later? A. Yes, sir.

Q. Then did you buy Goodrich again? A. Yes, sir.

Q. Did you feel that was the best deal you could get for you, Mr. Llewellyn? A. Yes, sir. At the time if I didn't think so I wouldn't have bought the tire back.

Q. Is that the way you have been buying tires ever since you have been in the station? A. Yes, sir.

Q. Whatever price deal you think is best for you? A. I strictly look for something that I can buy that I can sell at a profit, and to meet the competition of the chain outlets, who are right close to me, such as Sears and Roebuck, Pep Boys, and Penn Jersey.

Q. Do you get a good enough price from Goodrich to meet that competition? (5445) A. Not all together. I don't like to say anything to discredit the tire that anyone

Charles T. Llewellyn, for Respondents—Direct

sells, but I had to go out into the market and pick up a so-called tire that doesn't have the acceptance of a Goodrich or Firestone, but can be bought at a lower key deal price that I can meet the competition of the chain stores for the lower-priced tires.

Mr. Dias: I move to strike all of that answer after he answered the question to the effect that "No one—"

Hearing Examiner Kolb: The answer may stay in.

By Mr. Lorenzen:

Q. So then you bought another line of tire to meet the competition? A. Yes. I bought the Dunlop and the Mohawk.

Q. And that is what you handle now? A. Yes, sir. In addition to the Firestone and the Goodrich. And the Firestone line I buy I didn't buy from a distributor of the Firestone Tire and Rubber Company. I buy off of an independent.

Q. Tell me, from whom do you buy your accessories? A. From Motor Car Service and Auto Parts and Radiator Company, of Chester.

Q. Those are not either Firestone or Goodrich outlets? A. No, sir.

Q. Do those particular companies handle any tires? A. Auto Parts and Radiator.

(5446) Q. Does Motor Car Service? A. They did at one time, but they discontinued about eight years ago.

Q. And how about Delaware County? A. They don't handle tires. They handle Autolite batteries.

Q. Have you ever bought any Mansfield tires from Loos and Dilworth? A. It is a Philadelphia concern.

Charles T. Llewellyn, for Respondents—Cross

(5447) Q. Do you feel free to buy any kind of tires or batteries or accessories that you think best for your business? A. Yes, sir.

Q. Do you understand that that is the Texas Company's policy? A. Yes, sir. They never interfere with me.

. . .

Cross examination by Mr. Dias:

. . .

Q. What was your next venture in the service station business? A. I left and took a leased location from the Texas Company at 52 West Ninth Street, next door at that time to where the station is located now was a vacant lot.

Q. 52 West Ninth Street? A. Yes, sir.

(5448) Q. What year was that? A. That was in 1947.

Q. And how long did you stay there? A. Well, I opened that location up for them, and I was there two years and they built a new station, a three-bay station.

Q. You say you opened that station? It was brand new when you took it over? A. No, it was dilapidated. I don't know what class they call it. But at one point I believe they were going to discontinue the whole thing and drop the operation on the ground and leave it go. But I got in there and did a good job for them for two years and then they decided on that basis they were going to build a new station.

Q. Did you carry TBA at 52 West Ninth Street? A. Yes, sir.

Q. What TBA? A. I sold Delco batteries, I bought them from a firm now that is out of business Hyman Stein and Sons, and one day a Goodrich salesman stopped by for gas. I never saw him before. And I got talking to him. His name was Brown. He asked me, would I be interested in buying from the Goodrich Company, because there were no distribution point in the Chester area whatsoever.

Charles T. Llewellyn, for Respondents—Cross

Q. For Goodrich? (5449) A. Yes, sir. Or Firestone, for that matter, at that time. And I said, "Yes, I would like to consider it." He said, "I will give you the information. Did your salesman ever talk to you, your Texas Company salesman?" I said, "Yes," but our primary problem as we have it is that we just can't buy tires in any particular quantity to sell because anyone who had a franchise in tires right after the war, they really sold them out, the wholesalers sold them at retail. And the individual gas stations, unless they had contacts previous to the war—and I didn't have any—could get them. I couldn't.

Q. That situation was brought about by the war? A. Yes, sir.

Q. Did you then take on a supply of Goodrich tires? A. I didn't buy too many Goodrich tires. I first had to establish a credit rating with the company, and I first had to furnish them to the people with whom I bought in Chester, and it probably took five or six weeks.

Q. Before the Goodrich man spoke to you, were you carrying any tires at all, or just anything you could get your hands on? A. Anything I could get my hands on. Mostly recaps. No new tires.

Q. After your credit was approved, did you start carrying Goodrich? (5450) A. Yes. They allowed me so much credit a month. And I bought batteries from them. That was when I started to buy their batteries. And I never left them because the deal that they gave me in batteries was always perfect.

Q. So that sometime in 1947 you started buying Goodrich tires and batteries; is that correct? A. Well, the first I bought, sir, were batteries. There weren't too many tires available.

Q. When during that period 1947 to 1949 did you feel that you were in the tire business? A. I never actually was what you might say was in the tire business until I

Charles T. Llewellyn, for Respondents—Cross

got the new location, because my little setup there wasn't adapted to the kind of any particular amount of stock. The location wasn't safe. I couldn't get fire insurance. The only thing I carried were some batteries and tire chains.

Q. When did you go into the new location? A. The new location was built around 1950, at the same time as Mr. Capolupo. We opened within several days of each other.

Q. And that is your present location right now? A. Yes, sir.

Q. When you went into the new location did you carry Goodrich tires and batteries? A. Yes, I did.

Q. And did you continue to carry it until you had this (5451) little argument with Goodrich? A. Yes, sir.

Q. Over how long a period was that? A. Well, about a year and a half, I would say, two years.

Q. In other words, about 1952 you had this disagreement with Goodrich? A. About that, 1952-53. In around there.

Q. Can you tell us a little more about that? You apparently stocked up quite heavily on Goodrich? A. There is nothing to tell, other than I didn't think that they used good judgment. They either didn't value the good business I gave them or they were too greedy and felt that this would help them and not help us.

Q. It didn't seem to me that you considered yourself much of a factor. Did you buy many times during that period '50 to '52? A. I sold a lot of Goodrich tires, yes.

Q. When did this new distributor come in? A. He wasn't a distributor, the fellow who had the "A" deal. He wasn't a distributor.

Q. What was he? A. He had an "A" deal on the same basis as I bought tires. He wasn't a distributor.

Charles T. Llewellyn, for Respondents—Cross

Q. Was he a store? A. He was a store, yes:

(5452) Q. A Goodrich store or an independent store?
A. No, he was—it was a gypsy store. They handled anything that they could sell. They had a Fisk, and they had Mohawk, and they had Lee's, they had U. S. Royal, Firestone, Goodyear, any tire that you want to name.

Q. How did you have trouble with him? Couldn't you compete with him pricewise? What was the situation? A. The unfortunate part of people who come in to buy a price tire knew that they sold the Goodrich tire, too. So they came down and handed me a sheet of paper and said, "Look, Llewellyn, this is what I could buy it up the street for. What can you do?" I would hand the slip back and say, "You go back there." I wouldn't sell that tire at two percent, not even to my mother.

Q. You say that they finally discontinued, cut that dealer off? A. No, they didn't cut him off. He moved.

Q. At any rate he was no longer a factor, and you went back with Goodrich? A. I, in fact, never left them. The account was always open. I just never bought anything from them.

Q. Did you say you sent back \$35,000 or \$40,000 worth of tires? A. No, I didn't say that. I said that much in—between \$4,200 and \$6,000. I sent tires back at two different times within a space of about three weeks. You see, they couldn't (5453) get them all in the van, and I had to lug the rest of them up. That was the difference.

Q. Whatever it was you had, between \$4,000 and \$6,000 worth, that is what you returned to Goodrich; is that correct? A. I returned every Goodrich tire I had in stock then.

Q. Then, when did you start restocking? A. Well, that is a good question. I don't remember. But I do know that I have them now in stock. From time to time, I kept gath-

Charles T. Llewellyn, for Respondents—Cross

ering, accumulating them. And then, they had a liquidation program on old tread design that wasn't adapted to the new 14-inch tread, and they had to change the whole design to have the 15-inch conform to the 14-inch. So they sent a lot of them out in liquidation, which gave me sometimes two or three "tens" under key deals, and four "tens," and then I bought the tires, and that is when I bought a lot of Goodrich tires in. That is why I have as many as I have in stock now.

Q. Was that something within the last year or two?

A. Within the last two years, yes, sir.

Q. You also carry Firestone? A. I have some Firestone, yes, sir.

Q. Can you give us some idea of how many Goodrich and Firestone you have, and how many you have of the other brands you mentioned? A. I have about a hundred or so of Goodrich tires, and the (5454) biggest part of the stock in Goodrich that I have are of the so-called third grade safety-S liquidation. In other words, we get a couple of "tens" in that, and that is why I bought it. That is a good deal.

Q. That carries the Goodrich label? A. That's right, yes, sir. I don't have a premium first line Goodrich tire in my stock. That I sell on a pickup basis anymore.

Q. How about Firestone? How many Firestone have you bought? A. I must have about 40. I have about 30 or 40 that I bought from the Firestone store in Yeaton. They have a Firestone store in Chester, but I can buy the same tire at another Firestone location cheaper than I can within the confines of my own city, because they won't sell to me in Chester because I compete with them.

Q. Where are they located in Chester? A. About two squares away from me.

Charles T. Llewellyn, for Respondents—Cross

Q. You say you compete with the Firestone store? A. I can sell their tires as cheap as they can, and I can buy it off of one of their own stores, yes.

Q. How about Goodrich? Do they have a store anywhere near you? A. No.

Q. How many Dunlops do you have? A. I must have about 20 or 25.

Q. And Mohawks? (5455) A. About the same number. Maybe a few more of each. Not less.

Q. You don't carry General anymore? A. No.

Q. How do your TBA sales run? How do they average out over a month? A. Do you mean in dollars and cents?

Q. Yes. A. Sometimes \$600, and sometimes \$2,000. It all depends on the run that I get. It fluctuates.

Q. It runs from \$600 to \$2,000? A. That's right.

Q. When it is \$2,000? Is that in the height of the season, the peak of the season? A. Around Memorial Day, right before the 4th of July, and right before Labor Day. Those are your three big tire seasons.

Q. The 4th of July, Labor Day, and when? A. Memorial Day. Those are the three periods that are your best time months of the year. If you don't sell them then, you are stuck with them.

Q. And it would be around those periods that your TBA sales go up around \$2,000? A. Yes.

Q. The rest of the year they are down closer to \$600; is that correct? (5456) A. \$600 to \$1,000. I do a nice tires business because I go out on the market and buy tires at a price where I can compete and, thereby, I can move tires.

Q. Do you carry power motors, too? A. I used to carry them. I discontinued them.

Q. How about garden supplies? A. I had them, too, and I discontinued them.

Charles T. Llewellyn, for Respondents—Cross

Q. How long ago did you discontinue those items? A. Last year. Last summer. Not this summer, but the summer before.

Q. How much confectionery or tobacco do you sell? A. I retail my own cigarettes out. I don't have a cigarette machine. I used to have four of them and I sold them. I just sell my own cigarettes loose. I average about ten cartons a week.

Q. You don't count that in your TBA sales? A. That is rung up as a special item on the register for tax purposes, and it is not part of TBA. It is miscellaneous sales, not connected with TBA.

* * *

(5457) Q. You handle filters, do you not? A. Yes, sir.

Q. What brand filters? A. Fram.

Q. How about spark-plugs? A. Champion and AC.

Q. How about fan belts? A. Yes, I handle fan belts.

Q. What brand? A. Well, I have Goodrich fan belts.

Q. What other accessories do you buy from Goodrich?

A. None.

Q. Polishes, waxes? A. No, sir. Motor Car Service I buy all of my stuff.

Q. Sir? A. Motor Car Service. They have the DuPont line and I stay pretty close with the DuPont line right down the middle.

Q. How about Firestone accessories? Do you have any Firestone (5458) accessories? A. No. Never bought any in my life.

Q. In the course of a month's time, let's take the average month, now, other than these three big seasons for tires, can you give us some idea of this approximately \$600 worth of TBA sales, what part of that is the result of tire sales? A. Well, almost the entire amount of the \$600 rep-

Ray V. Bailey, for Respondents—Direct

resents tires in itself, and about \$400 is TBA. I sell more—I sell a few more tires I think for a gross month than I do TBA. It is pretty close. It is give or take five percent either way.

Q. What you are doing is giving me the figures on tires and batteries and others in the other group? A. Yes, sir. Battery sales are not too great. Not anymore than about eight percent.

Q. I think you mentioned that you didn't carry Firestone or Goodrich batteries; is that right? A. I didn't say that.

Q. Do you carry them? A. I carry the complete line of Goodrich batteries. I have carried them ever since, in the first part of our question about the little station.

Q. Even while you had trouble with tires? A. I still continued the batteries, because I couldn't match that price anywhere in the city of Chester. So, I hung on to (5459) them.

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(5460) RAY V. BAILEY was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and home address to the reporter? A. Ray V. Bailey, 1346 Cornwall Place, Norfolk, Virginia.

Q. You are in the service station business? A. Yes, sir.

Q. What kind of gasoline do you sell? A. Texaco.

Q. At what location? A. 21st Street and Colley Avenue, Norfolk.

Q. Do you have a lease with the Texas Company? A. Yes, sir.

Ray V. Bailey, for Respondents—Direct

Q. Is that one of those leases which renews itself each year? A. Yes, sir.

Q. How long have you been a lessee at this location? A. Twenty-two years and six months.

Q. This location is in the city of Norfolk? A. Yes, sir.

Q. You are Mr. R. V. Bailey, 21st and Colley Avenue, Norfolk, (5461) Virginia, whose principal brand of TBA is Gates? A. Yes, sir.

Q. That is the way you are listed on Exhibit 35. Do you know whether you gave any statement of any kind to the Federal Trade Commission in connection with this? A. I didn't, no, sir.

Q. Do you know whether a questionnaire was sent to your station? A. I understood that we had a questionnaire that came to the station and my assistant filled it out and mailed it while I was off duty.

Q. Do you know the contents of it at all? A. No, sir, I have no idea how he answered the questions or what.

Mr. Lorenzen: To the extent that statement may be used on cross-examination or used in preparing for cross-examination, I would like to repeat the motion made this morning that such statement be produced at this time.

Hearing Examiner Kolb: The statement hasn't been used, so I can't enter any order on it. Motion denied.

By Mr. Lorenzen:

Q. Do you handle TBA at your station, Mr. Bailey? A. Yes, sir.

Q. Have you done so quite a while? A. Yes, sir.

(5462) Q. Tell us why you handle TBA at all? A. That is where your biggest profit is. It is not in gasoline

Ray V. Bailey, for Respondents—Direct

or washing and Simonizing. You get it out of your TBA, batteries, tires, spark plugs, points, condensers, stuff like that.

Q. And it is your own choice that you sell and handle TBA; is that correct? A. Yes, sir.

Q. What type of tires do you stock and sell in that station? A. I have the Gates line.

Q. Entirely? A. Entirely.

Q. How many Gates tires are you stocking today? A. About 175.

Q. And how about batteries? What kind of batteries? A. Gates batteries.

Q. Entirely? A. Entirely.

Q. About how many Gates batteries do you have on hand? A. Right now we have close to 200. Between 180 and 200.

Q. What about accessories, what kind of accessories do you handle? A. We have Gates belts and Gates hose, and Fram filters, AC filters, Champion spark plugs, AC spark plugs, Autolite spark plugs.

(5463) Q. Do you buy any of your accessories from a Firestone or Goodrich supply point? A. No, sir.

Q. None at all? A. None at all.

Q. Do you display all of these Gates items? A. Yes. There are four tires displayed in the window, setting in a Gates stand, with the Gates name on it. We also have a stand, the price of tires stamped on the board.

Q. And your Gates batteries and belts, are they displayed where anybody can see them? A. The batteries are not. I have them in the back room. There are too many of them. They degenerate too bad if you put them in the window, with the sunshine on them. We keep them in the back room.

Q. Has your keeping them in the back room anything to do with the Texas Company? A. No, sir. The door is

Ray V. Bailey, for Respondents—Direct

not locked. The Texas Company man walks back there every time he comes around and takes a look.

Q. Has he ever suggested to you that you shouldn't display the Gates batteries? A. No, sir.

Q. You have signs advertising the Gates tires in your window, do you? (5464) A. Yes, sir, I have. Well, I have one decal. It is not a decal but a poster that I put in. Last week I think it was. Then we have the stands, the tire stands that you set the tires in. They are in the window. But I have no decals on my window at all, permanent decals.

Q. You mean you don't have any kind of decals whatever? A. No. We get a sign and just tape it up, stick it on the window. When it gets old we take it off and put up another one.

Q. For how many years have you had some kind of Gates tire identification publicly visible on your station? A. I took on the Gates agency in March 1950.

Q. Have you had publicly visible identification on your station ever since? A. Yes, and on my truck, stencilled on my truck, too.

Q. On your truck, also? A. Yes, sir.

Q. It says Gates service? A. It says Gates tires and—

Q. I show you this photograph and ask you if that is a photograph of a part of your station and of your truck? A. Yes, sir, that is it.

Mr. Lorenzen: May we have this marked for identification as Respondent's Exhibit 67.

(The photograph was marked Respondent's Exhibit 67 for identification.)

Ray V. Bailey, for Respondents—Direct

(5465) *By Mr. Lorenzen:*

Q. Will you look at Respondent's Exhibit 67 and tell me for how long have you had a sign like this, a Gates sign on your truck? A. Since 1950. Of course, it is not the same truck. I traded trucks since then. That is a 1956 model.

Q. But you had a similar sign with the Gates name on it since that time? A. Yes. We had that new truck stencilled before we put it in service just as you see it.

Q. I see a tire stand in the lefthand corner of this picture, and you can't make out the sign on top of it. Is that a Gates sign on top of it? A. That is a Gates sign, yes, sir.

Q. And for how many years have signs of that type been displayed in front of your station? A. Ever since I have had the line. Since 1950.

Q. From time to time you say you have window signs of Gates in your windows? A. Every time they send us a new window sign, price change, we put it in the window.

Q. And that has the name Gates on it? A. Yes, sir.

Q. And that has been going on since 1950; is that correct? A. That is correct.

(5466) Q. And is the sign to the left of the door one of those signs? A. That is the sign with the new tire design that just come out.

Q. That is a Gates sign? A. A Gates sign, yes, sir.

Q. And is that where you have been putting different types of Gates signs for the last five years? A. Right inside the door, as people walk in, so they can see it easily.

Q. That is the way you have been doing it for the past five years? A. If they ask questions about the tires I don't have to tell them.

. . .

Ray V. Bailey, for Respondents—Direct

(5467) Q. Do your bill heads and statements contain the name Gates? A. Yes, sir.

Q. Are these three documents which I show you bill heads and statement forms which you regularly use? A. Yes, sir. The statement form is what I work on.

Q. And on the upper lefthand side of this it says "Distributor of Gates tires and batteries", I think, if you spell in the letters which have been punched out by some filing machine; is that right? A. Yes, sir. That is "Gates tires and batteries."

Q. That is what it says on those? A. Yes, sir.

Q. How long have you been using statements and bill heads with this Gates name on them? A. I would say about four years, because as soon as we ran out of what we had on hand we had to have a new batch made up and we had them made up just like this.

Q. So you have been using this type of bill head and statements? (5468) A. Yes, sir.

Mr. Lorenzen: I ask to have these three documents marked as Respondent's Exhibits 68-A through C.

. . .

Q. Are you listed in the telephone book, Mr. Bailey, in connection with any TBA products? A. I am listed under Gates tires and batteries.

Q. Does your Texas salesman know about your sale of Gates tires and batteries? A. Yes, sir.

Q. As a matter of fact, the Texas Company's division point is in Norfolk, isn't it? A. That is correct, yes, sir.

Q. How about the personnel from that division point? Do they come into your station ever? (5469) A. I have about six or eight of the employees of the Texas Company that deal with me.

Ray V. Bailey, for Respondents—Direct

Q. Who buy at your station? A. Yes, sir.

Q. Do you know who they are? A. James Irdell is one.

Q. What is his position? A. That I can't—I don't know. I can't tell you what his position is. I really don't know.

Q. How far are you from the division office? A. About eight miles, roughly.

Q. Do you know whether any of the division officers like the managers or assistant managers are among the people who trade at your station? A. I don't think it is any of them, no, sir. It is just the regular run of employees at the stations—I mean at the plant.

Q. Salesmen and employees? A. Yes, sir.

Q. Has any one from the Texas Company ever told you that your lease would be cancelled, or that they would treat you badly in any other way if you didn't stop handling this Gates line? A. No, sir. I have never been threatened in any way from my company. I have been treated very nice.

(5470) Q. Have you known, during the time that you have been a dealer, that the Texas Company recommends the Firestone and Goodrich product to its dealers? A. Yes, I do.

Q. You have known that? A. Yes, sir.

Q. And have you known that you would be free to buy TBA wherever you wanted to? A. Yes, sir. I could buy anywhere I wanted, and what I wanted.

Q. And has that been your understanding of the Texas Company policy? A. That has been my understanding, and it has been my policy.

Q. Do you get a good financial deal on this Gates setup? A. Yes. I buy direct from the factory. That is the only way I can compete with Sears and Roebuck, right down the street from me. I can sell a set of tires within a buck of their price.

Ray V. Bailey, for Respondents—Direct

Q. Is that the reason you handle the Gates in your station? A. That is not the only reason. Gates is a good product, and it is a product we are proud to sell.

Q. It is a good product and you get it at a good price? A. That is right. It is like the Texaco products. I am proud to sell them and I think the tire is very good as far (5471) as quality is concerned.

Q. You have had good experience with them? A. Yes, sir.

Q. And your own customers are satisfied with them? A. Very satisfied.

Q. From whom do you buy your accessories? A. Chesapeake Auto-Supply Corporation, McLean Auto Supply Corporation, Perry Buick Motor Car Company, Kline Chevrolet Sales Company, Del Mar Service and Supply, and Five Points Service Center, I think. It is a heck of a lot of them.

Q. Are any of them the Firestone and Goodrich supply points in Norfolk? A. No, sir.

Q. You do not buy anything from them at all? A. Nothing at all.

Q. What is the average gasoline gallonage of your station? A. We run about 22,000.

Q. Do you find that the Texas Company is of any assistance to you in selling your TBA product? A. Yes, sir.

Q. What do you find they do to help you? A. Well, at the dealers' meetings they show you movies and they show you—they stress circle service and the proper way to service a customer, and they show you on your lube rack what to look for, bad tires, defective tires, and bad (5472) grease fittings, when they are bad to give them a new one, wheel packing, and changing the differential and transmission grease, and to be sure to check your hydramatic or Fordamatic or whatever make car you have, to use a clean cloth, to show them whether it is dirty or not.

Ray V. Bailey, for Respondents—Direct

Q. Do you look at the dealer magazine? A. Yes, sir. You get pretty much the same out of there as you do at the dealers' meetings. Not too much difference.

Q. Do you find that that help that you get is of help to you in selling the Gates line? A. It helps you sell anything that you have, yes, sir. Gates or any kind of TBA.

Q. That is, it is applicable to all kinds of TBA? A. Yes, sir.

(5473) Q. At those dealer meetings, are there representatives of Firestone and Goodrich present at times? A. There is one of each at every meeting, most that you go. They have a display of their product, one on one side of the room and one on the other.

Q. How many dealers attend these dealers' meetings? A. About 75 to 80.

Q. Have you attended a good many of them since you started operating your station? A. One of us usually goes, myself or my assistant. If it falls on my shift, he will go. Of course, vice versa.

Q. How many dealer meetings do you have about, a year? A. About two a year.

Q. And about how many do you think you have attended on the average, say, in the last ten years? A. I average better than one a year. It just depends. Maybe you will have two meetings a year, and I would get to go to both of them. The next time my assistant on his time off would go to the meeting.

Q. At those meetings, in your presence, has anybody from the Texas Company ever threatened you or any other dealer with lease cancellation or any other unfavorable treatment if you didn't buy some or all of the Firestone or Goodrich line? A. No, sir. They sure haven't.

Q. Do you get to talk to the other dealers at those meetings? (5474) A. As a rule I don't hang around too long. If my meeting is adjourned I go right on out home.

Ray V. Bailey, for Respondents—Cross

Q. Has any Texas dealer ever told you or complained to you to the effect that the Texas Company has told him they cancelled his lease or otherwise would treat him badly or unfavorably if he didn't handle the product of Firestone and Goodrich? A. No, sir; definitely not.

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Cross-examination by Mr. Dias:

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(5475) Q. Handling all these products other than Firestone or Goodrich, I take it that you have no need then for the credit card; is that correct? Do you have a Texaco credit card system? A. Yes.

Q. You don't charge these Gates' batteries and tires on those, do you? A. Yes, I put them on.

Q. You do? A. Yes.

Q. Do you offer extended credit to customers? A. We have only had a few. We usually carry our own credit on tires and batteries if a man doesn't have money. We carry (5476) our own credit system.

Q. You have your own credit system? A. Yes, sir.

Q. Weren't you at one time concerned about the fact that you were restricted by the credit cards to Firestone and Goodrich? A. No, sir.

Mr. Lorenzen: I think I will object to the form of that question. I think the credit card speaks for itself as to whether or not there is any restriction on it.

By Mr. Dias:

Q. Didn't you consider that restrictive? Isn't that one of the things that you discussed with Mr. Ott, the fact that you couldn't charge your Gates' tires and batteries? A.

Ray V. Bailey, for Respondents—Cross

No. He mentioned something about that, and I told him to go ahead and put them on there and see what happened, because the only time I have ever got balled out for putting something on the credit card was when I put a carton of cigarettes on there one time, and wrote out "cigarettes," and the man called, "Am I running a grocery store or service station."

Q. Who told you that? A. The bulk plant manager, the head of the plant.

Q. You never heard any complaints about putting Gates' tires or batteries on? (5477) A. No, sir.

Q. Are you identified with Gates' tires and batteries on the credit slip? A. I don't know whether he puts—Jimmy does, my assistant—when he writes them, but I do.

Q. You do? A. Yes.

Q. And you have never had any complaints? A. No complaints.

Q. Have you ever had customers who receive credit on a Gates tire or battery fail to pay? A. No. If they did all they do is send it back to me and I take care of it.

Q. Who would do that, Texaco? A. The Company.

Y 3.

Q. That has happened? A. No, not yet.

Q. How do you know that that is what Texaco would do? A. That is what they have done with other items that I put on and the customer didn't pay.

Q. With items other than cigarettes did they do that with? A. Well, say, for instance, if a card had been cancelled out and I didn't know about it, then they would, if I put something on, they would send it back to me.

Q. Has that actually happened? (5478) A. Yes.

Q. How recently? A. We had two last year.

Q. Can you tell us what the situation was? What was it that you gave credit on? A. That was gas, oil, and grease.

Ray V. Bailey, for Respondents—Cross

Q. Do you recall the amount involved? A. One was \$5.65, the other was \$7.10, I believe.

Q. Those were two different occasions? A. Yes.

Q. And subsequently Texaco asked you for reimbursement on those amounts; is that correct? A. Yes.

Q. What was the reason for that? A. The card had been cancelled but I hadn't been notified. I mean, hadn't gotten the notice.

Q. You had not received the notice as of the time you extended credit? A. We get a notice once a month on cancellations.

Q. And this happened to occur between the time of your usual notification? A. One of them had moved away from the city and didn't leave any forwarding address. Probably his card was still active but we couldn't locate him.

Q. And they returned that credit slip then to you to make (5479) it good; is that correct? A. Yes. The salesman brings it out and we repay him.

Q. Do you get that credit machine free? A. No, sir. We are paying one-half of one percent. I understand we are going to get a little refund back on that at the end of the year.

Q. How do you get this machine? Do you buy it outright or do they give it to you? A. They gave it to us.

Q. But then they charge you so much per month? A. Every \$100 worth of credit card business you run they charge you fifty cents.

Q. Is this the first year you have had this system? A. We just started that stamping system January 1 of this year.

Q. And this is the first time that they have rented or charged you something? A. Yes, sir.

Q. Heretofore there has been no charge? A. No. You had to do all your writing. Instead of having the stamp machine you had to write it out.

Ray V. Bailey, for Respondents—Cross

Q. Up to January 1 of this year you had to write everything out? A. Yes, sir. The card number, the man's name and address, and the sale, whatever it consists of.

(5480) Q. Including the product, that you sold? A. Yes.

Q. Starting, or going back prior to January of this year, at that time did you list Gates' tires and Gates' batteries on those charge slips when you made a sale of TBA? A. I don't—we haven't made too many sales of Gates' tires on Texaco credit cards. I dare say not over three or four.

Q. Not over three? A. Three or four a month, that I know of myself.

Q. In how long a period? A. The last three or four years.

Q. And is that because of the restriction on the card? A. No, sir. I didn't do anything about that. They didn't specify on the back of the card any brand of tires, I don't believe. Of course, I didn't read it too carefully.

One time it read that you could put on anything except label charges, pertaining to the automobile, they restricted that. Now you can add label charges.

Q. Getting back to the new card that has been issued this year, you don't have any idea of whether or not you are being charged for the machine or not? A. Oh, yes, I know, because it is deducted every time you turn it in to the Company.

Q. And is that the cost of the machine one-half of one (5481) percent? A. Yes.

Q. Were those the figures? A. That is what we call rental on it.

Q. Rental? A. Yes.

Q. Of everything that is charged via the machine, is that correct? A. Yes. In other words, if you write up \$500 they take off \$2.50 of the amount.

Q. And that goes on month after month? A. Yes.

Ray V. Bailey, for, Respondents—Cross

Q. When do you make that settlement? A. At the end of the year I understand they are going to charge a flat rate of \$3.00 a month. All over that will be mailed back by check. That is the way I understood.

Q. How do they know how much business has gone through your credit machine? Do they compute that from these tags or stubs that you turn over? A. We have to list them on a form, and then total them. When we total them we put them in an envelope and deduct one-half of one percent and then you turn them in that way.

Q. Turn them in to whom? A. To the Texas Company.

Q. This Division office in Norfolk? (5482) A. The gasoline or motor oil, the truck driver picks them up.

Q. These Gates' batteries that you have in the station, I think you said that you have about 200 of them? A. It is close to 200.

Q. I suppose they are dry batteries? A. I got a special deal. One day the man called me up in Richmond. He said he had about a hundred, if I could— if I could see my way clear to take them all he would give me an extra 25 percent.

Q. Are they dry batteries? A. Eighteen of them was wet.

Q. And the rest are dry? A. The rest are dry.

Q. You mentioned that you didn't keep them in the window because of the sunshine. Did you say that sunshine would hurt the batteries? A. It makes them fade. Even the dry.

Q. The outside appearance? A. Yes.

Q. It has no effect on the strength of the battery? A. No, not the dry batteries. It has an effect on the merchandise and you can't sell them. If you kept it in a paper carton like they come to your place, people wouldn't know whether it was a battery or a watermelon in the carton.

Almon G. Lane, for Respondents—Direct

(5484) ALMON G. LANE was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Lane, will you give your full name and home address to the reporter? A. Almon G. Lane, 66 Queensbury Street, Boston, Massachusetts.

Q. Are you in the service station business? A. Yes, sir.

Q. At what location? A. 190 Cambridge Street, Allston.

Q. What type of gasoline do you sell? A. Texaco.

Q. Do you have a lease? A. Yes, sir.

Q. From the Texas Company? A. Yes, sir.

Q. And it is one of those leases which renews itself each year? A. That is correct.

Q. For how long have you had it? A. Since October 1955.

Q. Before that time were you connected with the same station (5485) at the same location for some time? A. Since September 1937.

Q. Were you actively there operating the station? A. That is correct.

Q. Then, in October 1955 you bought out the fellow who owned it before you? A. That's right.

Q. He also had a lease from the Texas Company, did he? A. Yes, sir.

Q. About what is the gallonage of your station? A. 40,000 gallons a month.

Q. And you handle TBA? A. Yes, sir.

Q. Will you tell us why you handle it? A. Well, it is necessary, it goes hand in hand with gasoline, each one reciprocal to the other.

Q. You use that \$50.00 word as though you went to Dartmouth College. Did you? A. No. I went to a very

Almon G. Lane, for Respondents—Direct

good non-sectarian college in Lewiston, Maine. Bates College.

Q. Bates? A. That is correct.

Q. Can you tell me what type of TBA you handle? A. I don't understand.

Q. I mean make. Let's start with tires. (5486) A. I have Firestone and Goodyear tires, and Fram filters, Gates radiator hoses and fan belts.

Q. What kind of batteries? A. Autolite; occasionally, Delco.

Q. You don't stock too much of anything, do you? A. No.

Q. How many Firestone tires do you stock? A. Probably two.

Q. How many Goodyear tires do you stock? A. Just about the same in Goodyear.

Q. You mean also about two? A. Two, that is correct.

Q. You sell quite a few tires, do you? A. Yes, I do.

Q. How do you sell them? On a pickup basis? A. That's right.

Q. What sort of tires do you pick up most? A. Firestone.

Q. Then, Goodyear, is it? A. And Goodyear, yes, sir.

Q. You pick them up on the basis of what the customer demands? A. Not necessarily. The type of customers that I have are primarily doctors and lawyers, and they leave their cars and we pick up what we think is appropriate to the job, to the car.

Q. And then, they accept your judgment? (5487) A. Definitely.

Q. Do you often pick up anything other than the nationally advertised line of tires? A. No.

Q. Usually you put on one of the nationally advertised tires? A. That is correct.

Q. And most often Firestone? A. That is right.

Almon G. Lane, for Respondents—Direct

Q. And the doctors and lawyers are satisfied with that?

A. That's right.

Q. How many batteries do you stock now? A. I have one Autolite battery in my place.

Q. And that is the only battery you have? A. That is correct.

Q. And again do you sell those on a pickup basis? A. Pickup basis.

Q. Is your supply point near at hand? A. Very close.

Q. How close? A. Within five minutes going and coming.

Q. And does the same apply to your tire supply points?

A. That is right.

Q. That is the reason you stock so little? A. That is correct.

Q. So you don't have your own funds tied up in inventory? (5488) A. No.

Q. Do you have signs on your place advertising the tires that you handle? A. I do.

Q. And does that go both for Firestone and for Good-year? A. That's right.

Q. I show you a picture of a fence and a tire ad, a "friendship" fence. A. Yes, sir.

Q. Is that a fence on your premises? A. That is.

Mr. Lorenzen: I ask to have this marked Exhibit 69-A. And this photograph as 69-B.

(Whereupon, the documents referred to were marked Respondents' Exhibit 69-A and -B for identification.)

By Mr. Lorenzen:

Q. I show you Respondents' Exhibit 69-B and ask you if that is the Firestone sign which you testified you have?

A. Yes, sir.

Almon G. Lane, for Respondents—Direct

Q. Are those the Goodyear signs which you said you have? A. Yes, sir.

Q. For how long a time have signs like that been up in about that location? A. Well, before I had the station.

Q. Before you had it. (5489) A. Yes.

Q. Have they been up there continuously except when the fence was being painted? A. That's right.

Q. Those signs were up at the time you opened the station under your lease; is that right? A. Yes, sir.

Q. I show you Exhibit 69-A and ask you to tell us what those signs are on the front of that station. They are a little illegible on the photograph. A. Those are advertising my Autolite batteries.

Q. There is a clock there. What does that advertise? A. Autolite batteries.

Q. Does it say Autolite batteries on it? A. It says Autolite Stay-Full Batteries right on the face of the clock, and it is illuminated at night.

Q. I see some square signs with writing on it, either side of the lube bay door. A. Those are to which I have referred as being the advertisements for my Autolite batteries.

Q. That is in addition to the clock? A. That's right.

Q. For how long a time have you had some type of advertisement for Autolite batteries on your station? A. Practically all the time.

(5490) Q. Since you have— A. (interposing) Since I have owned the station.

Q. Did you open with Autolite? A. Yes, sir.

Q. When you took your lease you had Autolite? A. That is correct.

Almon G. Lane, for Respondents—Voir Dire

Voir dire examination by Mr. Dias:

Q. Did you take these pictures? A. No, sir, I didn't.

Q. They were taken by the Alfred Brown Studio? A. I couldn't say. I don't know.

Q. Do you know when they were taken? A. Probably a month or more ago.

Q. Did you know the man who took the pictures? A. No.

Q. Were you there the day the pictures were taken? A. No, I was away.

Mr. Dias: No objection.

(5491) *Direct examination (resumed) by Mr. Lorenzen:*

Q. Do you openly display your Autolite batteries, such as you have? A. Surely.

Q. And your Goodyear tires? A. Yes, sir.

Q. From what source do you buy your accessories? A. Firestone Stores, Automotive Distributors, an outfit called Everett Auto Parts, and Columbia Auto Parts.

Q. The last three, I believe you have mentioned, are not either Firestone or Goodrich supply points, are they? A. That's right.

Q. They are not? A. No, they are not.

Q. Do you ever buy Delco batteries from Everett Auto Parts? A. Occasionally.

Q. And what do you buy—the general line of accessories from them? A. From Automotive Distributors I purchase primarily all my accessories.

Q. Where do you get your Gates fan belts? A. From Automotive Distributors.

Q. When you said you bought it from Firestone, the same dealer from whom you buy the Firestone tire also sells the (5492) Gates, doesn't he? A. That is correct.

Almon G. Lane, for Respondents—Resumed, Direct

Q. So that while you buy from the same man from whom you buy Firestone tires, the 'merchandise you buy is not in the Firestone line? A. That's right.

Q. Isn't that right? A. That is correct.

Q. In fact, you buy your Autolite batteries from the same man who sells the Firestone tires? A. That's right. That is correct.

Q. Such batteries as you stock are dry charge, are they? A. Yes.

Q. Are most of your sales dry charge? A. I beg your pardon?

Q. Are most of the sales that you make, of batteries, the dry charge type of battery? A. They are all dry charge.

Q. All dry charge? A. Yes, sir.

Q. Do you find that more satisfactory? A. That's right.

Q. You know, of course, don't you, that the Texas Company recommends the Goodrich and Firestone line? A. Yes, sir.

(5493) Q. What was your understanding with respect to whether you had to buy some or all of that line in order to keep your lease? A. There was no stipulation made that I had to purchase anything. I could purchase what I wished from whom I wished.

Q. And was that your understanding of the Texas Company's policy? A. That is correct.

Q. And you acted accordingly? A. I have.

Q. Do you find that the Texas Company was of any assistance to you in marketing your TBA? A. Definitely.

Q. What kind of help do you get? A. Well, the salesman gives us constructive ideas on how to market, and we receive Texaco magazines that illustrate different ways to sell merchandise. They have dealer meetings and there are all sorts of constructive suggestions that are received.

Almon G. Lane, for Respondents—Resumed, Direct

Q. Do you find that that is as useful for marketing your Goodyear tires and Autolite batteries and your accessories as they are in marketing Firestone products? A. All you do is just apply the principle that they extend to any product, and you are successful with it.

Q. And you find that they are useful?

(5494) Q. By the way, do you use this "S-75" system?

A. That follow-up system?

Q. Yes. A. It is very good.

Q. Is that something that the Texas Company furnishes to you as its dealer? A. That's right.

Q. And you use that as a follow-up to your own customers? A. That's right.

Q. Does your Texas salesman, or whatever other contact you have with the Texas Company, know that you sell these Goodyear tires and have this Goodyear sign? A. Yes, he does.

Q. And the Autolite batteries? A. Yes, sir.

Q. And they know that the accessories which you buy are not in the Goodrich or Firestone line? A. That's right.

Q. They know that? A. They know that.

Q. At any time has any threat been made to you that your lease would be cancelled or that you would be treated badly in some other way if you didn't stick with the Firestone or Goodrich line? A. No, sir.

(5495) Q. You said that you got some help from dealers' meetings. Will you tell us where those dealers' meetings are held and about how many Texas dealers attend?

A. They are held in Boston, Framingham, and probably—it is up to the convenience of the size of the building they are using as to how many attend, because you are never going to have all the dealers there are in Boston. Probably 35, 30 at a time attend the meetings.

Almon G. Lane, for Respondents—Cross

(5496) Q. You think about that many attend, on the average? A. Yes.

Q. Have you had a chance to get acquainted with them?

A. Oh, yes. /

Q. Have you talked shop with them after the meeting?

A. Yes.

Q. At any time in the course of these meetings has anyone from the Texas Company threatened you, or in your presence any of the dealers, with lease cancellation or with any other unfavorable treatment if they didn't handle some or all of the Firestone or Goodrich line? A. No.

Q. Nothing like that has happened? A. Nothing like that.

Q. Have any of the dealers, other Texas dealers, ever told you or complained to you that they have been threatened with lease cancellation or other unfavorable conduct if they didn't handle— A. No.

Q. (continuing)—the Firestone or Goodrich line? A. Never has been any such comment as that made.

Q. You have your Gates' fan belts displayed, too, haven't you? A. Yes, sir.

Q. On wall racks with the Gates' name on it? (5497)

A. That's right.

Mr. Lorenzen: That is all.

Cross-examination by Mr. Dias:

Q. I am a little confused on the Firestone purchases there. You purchased at the Firestone stores? A. That is correct.

Q. Do I understand that you also get Autolite batteries at the Firestone store? A. No. There are two Firestone—there are two suppliers of Firestone tires. One is the Firestone store at which I purchase, that I purchase nothing but Firestone tires from. There is another store which

Almon G. Lane, for Respondents—Cross

supplies primarily all my TBA items which, coincidentally, furnishes Firestone tires. And occasionally I purchase Firestone tires there when I happen to be there purchasing a TBA product and it is convenient for me to pick up Firestone tires.

Q. But the bulk of your Firestone tire purchases, as I understand it, are made at the Firestone stores? A. I would say they are pretty near even.

Q. Would you give us the name of this other store that incidentally sells Firestone products? A. Automotive Distributors.

Q. Just to be sure the record is clear, Automotive Distributors sells various products, including Firestone tires? (5498) A. That is correct.

Q. And also Autolite batteries? A. That is correct.

Q. And other items? A. Yes.

Q. You buy the bulk of your accessories from Automotive Distributors? A. That is correct.

Q. I think you told us you bought Fram filters, Gates' hose and fan belts? A. Yes.

Q. Do you buy those from Automotive? A. Yes.

Q. What about your plugs? A. Champion plugs from them.

Q. And windshield wiper equipment? A. That's right.

Q. Do you do any repair work at your station? A. Yes, sir.

Q. Do you do much of it? A. Well, quite a bit, yes.

Q. Do you compute that in your TBA sales monthly, that is, the parts that you use in your repair work? A. Unless it is a TBA item.

Q. Do you consider a muffler, for example—

(5499) (Continuing)—or brakes or shocks? A. Tires, batteries, accessories, such as plugs, fan belts, radiator hoses, such as that.

Almon G. Lane, for Respondents—Cross

Q. What are your gas sales monthly? Around 40,000 gallons? A. That's right.

Q. Dollarwise, can you give us an approximate figure? A. Well, it will fluctuate according to the season. But, say, around \$10,000.

Q. Per month? A. Yes.

Q. That is, 40,000 gallons will sell for about \$10,000 per month? A. That's right.

Q. What do your tires, batteries, and accessories sales run per month? A. Say, \$2500, around there.

Q. Of that \$2500, what would be your estimate as the amount that is done in the tire business, tire sales? A. I should say my tires would approximate maybe 50 percent of it.

Q. When the customer leaves a call with you, I think you said he leaves it up to you as to what type of tire to put on? A. In the majority of instances, yes.

Q. Unless he specifies the type tire, do you normally (5500) replace it with a Firestone? A. That is correct.

Q. How about Goodrich? You don't deal with Goodrich at all? A. No, I don't.

Q. Is there a Goodrich distributor anywhere near you? A. No, not anywhere near me. There is a Goodrich distributor, but it is quite a ways.

Q. Do you have any competition at all from Goodrich? A. No. It is too far.

Q. The former owner of your station, what was his name? A. Mr. Ralph Downey, — D-o-w-n-e-y.

Q. Did he have a trade name? A. Yes. Aye's Petroleum Company Incorporated.

Q. Was the station known as the Aye's Petroleum Company, Inc.? A. That's right.

Q. Isn't that a little unusual for a service station? Was there anything— A. That was an independent station

Almon G. Lane, for Respondents—Redirect

Almon G. Lane, for Respondents—Recross

previous to the time I had it. Consequently, he could have any kind of a name he wanted on it.

Q. I think you said that he carried Firestone? A. That's right.

Q. Did he carry any Goodrich? A. No. As a matter of fact, I am carrying exactly what he (5501) had.

Q. I see. And were you employed at one time by Texaco? A. No.

Q. By the Texaco Company? A. No, sir.

Q. You were not? A. No, sir.

Q. Do you attend those dealer meetings very often?

A. Not as often as I should, but I get in as many as I can.

Mr. Dias: I have nothing else.

Redirect examination by Mr. Lorenzen:

Q. This 50 percent of your TBA you said is in tire sales? A. Yes.

Q. That includes the Goodyear sales as well as the Firestone, does it not? A. Definitely.

Q. And any other tires that you sell? A. That's right.

Recross examination by Mr. Dias:

Q. You mentioned any other tires. I didn't realize you sold any others. I thought it was Firestone and Goodyear? (5502) A. No. Goodyear, and Firestone, and—I don't have any other tires.

Almon G. Lane, for Respondents—Resumed, Redirect

R. Leo Leonard, for Respondents—Direct

Redirect examination (resumed) by Mr. Lorenzen:

Q. Do you pick up any others if people want them? A. I have had requests to pick up maybe a Royal tire, but where I have to go for a Royal tire is too far. What I make on it I can get on the price that I get on a Firestone tire. Consequently I discourage them. If they insist on a Royal tire I guess I don't get the sale.

Q. Do you feel that you make the best profit that you can make on the Firestone tire? A. Definitely.

Q. And that is why you push the sale of those? A. Yes. It is a good tire, I get the best discount I can get on any type of tire. It is a high-priced tire, quality.

Mr. Lorenzen: That is all.

. . .

(5503) R. LEO LEONARD was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and address to the reporter? A. R. Leo Leonard, Lexington, North Carolina.

Q. You are in the service station business? A. Yes, sir.

Q. Do you sell Texaco gasoline? A. Yes, sir.

Q. At what location? A. Third Avenue and Main Street.

Q. You have been there for some twenty years? A. Yes, sir.

Q. About what is the gallonage of your station? A. Around 10,000 gallons.

Q. Do you handle any TBA? A. Yes, sir.

R. Leo Leonard, for Respondents—Direct

Q. You are the R. L. Leonard, at Third and Main Streets, Lexington, and your principal product has been Seiberling tires? A. Yes, sir.

Q. That is how you are listed on Exhibit 35. Do you still (5504) handle Seiberling? A. Yes, sir.

Q. One hundred percent? A. Yes, sir.

Q. How long have you been a Seiberling dealer? A. About 35 years.

Q. What kind of batteries do you handle? A. Autolite.

Q. And you have done that for a long time, too? A. Yes, a good while.

Q. Twenty years? A. Perhaps. I don't recall. We had a couple more before that.

Q. From whom do you buy your accessories? A. From Smith Distributing Company, Winston-Salem; Myers Auto Parts, Lexington; United Auto Service. That is about the bulk of them.

Q. You buy nothing from Firestone and Goodrich? A. No.

Q. Sometimes in late 1951 or early 1952 did anyone from the Texas Company make a particular campaign or effort to get you to stop handling the Seiberling tires? A. No, sir.

Q. You have been aware, have you, that the Texas Company recommends to its dealers the Firestone and Goodrich lines? (5505) A. Oh, yes, yes.

Q. But you have also known you could buy what you wanted to? A. Yes, sir.

Q. And you have done so? A. Yes.

Q. Have the sources from which you buy your TBA changed to any extent in the whole twenty years you have been at this station? A. Not too much, no. Probably taken on a new distributor or something.

Q. But you handled Seiberling the whole time? A. Yes, we have had Seiberling the whole time, and Autolite.

R. Leo Leonard, for Respondents—Direct

Q. And the whole time you have bought from people other than Firestone and Goodrich? A. How is that?

Q. And the whole time you have bought from suppliers other than Firestone and Goodrich? A. Yes.

Q. As far as your accessories go? A. That is right.

Q. Do you attend dealer meetings? A. Yes, I have attended them.

Q. A good many of them? A. Yes, a good many.

Q. At any time at those meetings have you heard any threat (5506) made to any dealer that his lease might be cancelled if he didn't buy some or all of the Firestone or Goodrich lines? A. No, I have never heard that.

Q. Have you gotten acquainted with other dealers at those meetings? A. Oh, yes, yes. I know a good many of them.

Q. Do you know other Texaco dealers? A. Yes, sir.

Q. Have you talked with them? A. Yes, sir.

Q. Talk shop with them? A. Yes, we talk business, and socially.

Q. At any time have any of those dealers ever complained— A. No, I have never heard them, no.

Q. No complaint about any threat that their lease would be cancelled or that the Texas Company would treat them badly in some other way if they didn't buy some Firestone and Goodrich? A. No. I have never heard anyone say that.

Q. I think you told us your gallonage was between ten and fifteen thousand gallons a month. A. Yes.

R. Leo Leonard, for Respondents—Cross

(5507) *Cross examination by Mr. Dias:*

(5508) Q. Do you do any auto repair work there?

A. Yes, sir.

Q. And recapping? A. Yes, sir.

Q. Don't you run some sort of a wholesale business there, too? A. Yes, sir.

Q. And you sell service station equipment? A. Supplies principally.

Q. What does that entail? A. Oils, greases, and white-wall cleaner, spark plugs, service station supplies in general.

Q. You sell accessories there, too? A. Some, yes.

Q. What type accessory? (5509) A. Fan belts and wiper blades and—

Q. (Interposing) What kind of fan belts do you sell? A. Gates.

Q. Do you sell these at wholesale to what? Service stations? A. That's right.

Q. How many service stations do you sell to? A. I don't know how many we have.

Q. Can you give me some estimate? A. We cover all the county. There probably must be at least 50 or more.

Q. And do you sell to other Texaco stations? A. Yes.

Q. Can you name some of them? A. South Main Texaco is the only one in town.

Q. What is the name? A. South Main Texaco.

Q. Is he the only other Texaco station in town? A. The only one in the city limits. There may be some out of town.

Q. Your station at Third and Main, has that been open continuously from the time you took over in 1949 up to date? A. Yes. It has been open since '23.

R. Leo Leonard, for Respondents—Cross

Q. It wasn't closed at all at any time? A. No.

Q. Would a piece of mail addressed to the Texaco station (5510) at Main and Third Streets, Lexington, North Carolina—that would be your station, wouldn't it? A. Yes, sir; that is the location.

Q. Why do you suppose that piece of mail was returned marked "out of business"? A. I wouldn't know.

Q. You are sure your station was open at that time? A. Yes, sir.

Q. How many Texaco stations in all are there in Lexington, do you have any idea? A. In the city limits?

Q. Yes. A. There are only two, I think, in the city limits.

Q. Just yourself and this other station? A. Yes.

Q. What does this other Texaco station carry in the line of tires and batteries? A. I don't think he stocks anything.

Q. Nothing at all? A. I don't think so.

Q. Is he a lessee, too? A. I don't know how he operates. I guess he is.

Q. You don't know? A. No.

Q. Do you know who owns the property that you are at (5511)? A. Yes, sir.

Q. Who? A. Doctor C. R. Sharp and C. S. Leonard estate, who was my brother.

Q. And do they lease the property to Texaco? Is that the situation? And Texaco, in turn, leases it to you? Is that right? A. No, sir. They lease it to me, and I lease it, in turn, to Texaco, and then back to me.

Q. You lease it to Texaco and Texaco, in turn, leases it back to you? A. I have a lease with the property owners.

Harold Crawford, for Respondents—Direct

(5517) HAROLD CRAWFORD was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Royall:

Q. What is your name? A. Harold Crawford.

Q. Where do you live, Mr. Crawford? A. 187 Linden Avenue, Middletown, New York.

Q. Are you a lessee of a Texas service station? A. Yes.

Q. Where is that located? A. 76 East Main Street, Middletown, New York.

Q. Is that the regular type of one-year, renewable lease that you have? A. Yes, sir.

Q. How long have you been a lessee of that station? A. Approximately nineteen years.

Q. What is your monthly gallonage of gasoline? A. Approximately 18,000.

(5518) Q. What are your monthly sales of TBA? A. Percentage-wise?

Q. No, just in dollars. What are they per month? How much do you sell in tires, batteries and accessories in one month on the average? A. Six to eight hundred dollars a month.

Q. Do you carry a pretty full line of tires, batteries, and accessories? A. Yes, sir.

Q. What part of your TBA is tires? What percentage? A. Approximately 45-50 percent.

Q. What is the percentage of your batteries? A. Fifteen to twenty percent.

Q. And the rest of it is accessories? A. Yes, sir.

Q. What benefit do you derive from your TBA activities? A. It brings me in added income, and brings me additional customers.

Harold Crawford, for Respondents—Direct

Q. Does that in effect increase your gasoline gallonage, also? A. Yes, sir.

Q. What brand of tires do you carry? A. What brand do I get?

Q. Do you carry? A. Firestone.

(5519) Q. All your tires except those that are pick-ups, are they Firestone? Do you carry any other tires besides Firestone in stock? A. I don't stock any other tires, other than Firestone.

Q. On pick-ups I suppose you get what they want you to pick up? A. Yes, sir.

Q. Does Firestone do your recapping? A. A little, yes. Most of it is done privately.

Q. Is some of it done by others? A. Yes.

Q. What batteries do you carry? A. Willard and Autolite.

Q. And do you carry any Firestone or Goodrich batteries? A. I have two Firestone batteries in stock.

Q. You have what? A. Two Firestone batteries in stock.

Q. The great majority of your battery business is— A. Willard and Autolite.

Q. Are your accessories bought from Firestone or Goodrich or from others? A. Other sources.

Q. What are some of the companies you buy from? A. Accessories or tires, which?

Q. What is that? (5520) A. Accessories or tires?

Q. You told about the tires. Where do you buy your batteries and accessories? A. I buy Autolite from Harvey Brothers. I buy Willard from the Regional Battery Supply.

Q. Do you buy anything from Middletown Automotive Company? A. Yes, sir, spark plugs, fan belts, oil filters.

Q. Do you buy from S. J. Harding? A. Yes, sir.

Harold Crawford, for Respondents—Direct

Q. What do you buy from them? A. Filters, spark plugs, oil filters, fan belts, chemicals.

Q. Is eighty percent of your recapping done with the Empire Tire Company? A. Yes, sir.

Q. Do you buy anything from Automotive Electric? A. Yes, sir.

Q. What do you buy from them? A. Plugs, filters.

Q. Do you buy from Broadway Ignition? A. Yes, sir.

Q. What do you buy from them? A. Chemicals, spark plugs, fan belts, oil filters.

Q. And do you also buy from S. G. Kimball, of Newburgh? A. Yes, sir.

Q. And The State Automotive Supply Company? (5521) A. Yes, sir.

Q. What percentage, overall, of your TBA is not bought from Firestone and Goodrich? A. Sixty percent.

Q. Sixty percent? A. Yes, sir.

Q. Notwithstanding the fact that sixty percent of your TBA is bought from others than Firestone and Goodrich, has the Texas Company done any improvement on your station while that condition existed? A. Yes.

Q. What did they do? A. They put an entirely new building in about nine years ago.

Q. Are all your batteries dry batteries? A. Yes, sir.

Q. What are your reasons for carrying Firestone tires, primarily? A. I personally feel they are a good tire, they are what the public demands and accepts.

(5522) Q. Were you forced to carry them in any way? A. No, sir.

Q. Do you think they are good quality tires? A. Yes, sir; I do.

Q. Do you think they are the best? A. As far as I am concerned they are.

Q. And you think they have better acceptance than any other? A. Yes, sir.

Harold Crawford, for Respondents—Direct

Q. How about the question of adjustment? A. I have never had any problems with adjustments on Firestone.

Q. How about the matter of service that you get? A. I have good service.

Q. Is their source of supply convenient? A. Very convenient.

Q. What percentage of your tires are pick-up tires where people ask for them? A. I would say 50 to 60 percent is pick-up.

Q. Do you have a Firestone decal or sign up? A. I have decals on the windows and I have a Firestone sign displayed outside.

Q. Where did you get them? Who furnished those signs? A. The Firestone Company themselves.

Q. Did you request it? A. Yes, sir; from them.

(5523) Q. You use the Texas credit card, do you? A. Yes.

Q. What do you put on them? What sort of TBA do you put on them? A. Anything.

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Q. Has Texas ever complained to you about charging any non-sponsored goods on those cards? A. No, sir.

Q. And they know you do not buy sponsored accessories and batteries, do they not? A. Yes, sir.

Q. Does Texas recommend Firestone or Goodrich to you, as tires to carry? A. Yes, sir.

Q. They recommend that to you? A. Yes, sir, they do.

Q. Have you ever obligated yourself or promised to carry the tires or accessories or batteries which they recommend? A. No, sir.

Q. Have they ever claimed that you are under obligation (5524) to do so? A. No, sir.

Q. Did you, by any chance, happen to have a conversation with any of the Texas representatives about whether

Harold Crawford, for Respondents—Direct

or not you could make your own decisions on buying TBA? Did they talk to you about it at one time? A. Yes. A few years back, probably three or four years ago, Mr. Kessler, who represents the TBA out of New York, stopped in on his usual call and we discussed the TBA setup.

Q. That was on his regular call? A. Yes. Routine call.

Q. At that time you had acted independently in your purchase, had you not? A. Yes, sir.

Q. And you didn't raise or he didn't raise any question about that, did he? A. No, sir.

Q. What did he say in the call about it? A. He recommended of course the additional lines which they sponsor, that I was free to buy whatever I wanted to.

Q. And did you act on that assumption before and after that conversation? A. Yes, sir.

Q. Did you ever get from time to time this letter about oil discounts? (5525) A. Yes, sir.

Q. Do you recall whether that had something in it about independents? A. Yes, sir, it did.

Q. I suppose you don't remember the exact words? A. No, I don't.

Q. Do you and have you at all times felt free to buy what TBA you wanted and from whom you wanted? A. Yes, sir.

Q. Has anyone ever threatened you, anybody from the Texas Company, because you bought the majority of your items from non-sponsored sources? A. No, sir.

Q. Has that matter arisen in any way in connection with rebuilding your station for you? A. No, sir.

Q. Or in connection with any other dealings you have had with Texas? A. No, sir.

Q. Are your non-sponsored items displayed? A. Yes, sir.

Harold Crawford, for Respondents—Direct

Q. Are some of them in stands or racks? A. Batteries are in stands where they can see them.

Q. I believe you handle Gates' bells, do you not, for example? (5526) A. Yes, sir.

Q. Where are they carried or shown? A. They are displayed on the wall of the lube room or the wash room, where anybody can see them.

Q. Has that been the situation over the past several years? A. Yes, sir.

Q. Where do you carry your batteries? A. In a display room right at the front window where everybody can see them.

Q. You spoke of Willard batteries. Do you advertise those openly? A. I have an ad in the classified section of the telephone directory and also occasionally on the radio and newspaper.

Q. You say you bought your tires from Firestone. Where do you buy your tubes? A. Well, I buy them from several. I have Goodyear, U. S. Royal, and Firestone tubes.

Mr. Royall: I would like to have marked for identification, your Honor, for possible introduction, two photographs Respondent's Exhibits 70-A and -B.

(The documents referred to were marked Respondent's Exhibits 70-A and -B, for identification.)

By Mr. Royall:

Q. I hand you two photographs and ask you, are they photographs of portions of your station? (5527) A. Yes, sir, they are.

Q. When were they taken, do you know? A. February.

Q. Do they represent the situation that has existed as to display in those portions of your station for the last several years? A. Yes, sir, they do.

Harold Crawford, for Respondents—Direct

Q. I will ask you about 70-A. Are there any tubes of companies other than Firestone or Goodrich displayed in there, and would you— A. Yes, sir, there are Goodyear tubes right there (indicating).

Q. That is on the top shelf? A. Yes, sir.

Q. Does the second picture show Willard batteries? A. Willard and Autolite.

Q. That is 70-B.

(5529) Q. Did any Texas representatives ever fuss with you about displaying these items? A. No, sir.

Q. Did they ever quarrel with you about it? A. No, sir.

Q. Did they ever ask you to display them elsewhere? A. No, sir.

Q. Or to hide them? A. No, sir.

Q. Has the Texas Company in any way helped you with your TBA operations? A. Yes, they have.

Q. What have they done? A. They have made suggestions which have been helpful in promoting sales. Well, through their national advertising alone brings in additional customers.

Q. And is their assistance of value to you in non-sponsored goods as well as sponsored goods? A. Yes, sir.

Q. Do you get the dealers' magazine? A. Yes, sir.

Q. Do you attend dealers' meetings? A. Yes, sir.

Q. About how often are they held? (5530) A. About twice a year.

Q. Do you know approximately how many would usually be there? A. Around 40.

Q. Do you find them helpful in selling your TBA, sponsored or non-sponsored? A. Yes, sir.

Harold Crawford, for Respondents—Cross

Q. At these meetings have you ever heard any Texas representative criticize or threaten any dealer because he carried non-sponsored goods? A. No, sir.

Q. Do you get around and talk to these dealers a fair amount? A. Yes, sir.

Q. Do you talk about your business? A. I talk shop.

Q. Do you have a sort of a social feature of it? A. Yes, sir.

Q. Even during the social feature do you still talk shop? A. Yes, sir.

Q. Do you talk about the TBA situation and the gasoline situation and everything else? A. Everything in general.

Q. At any of those meetings have you ever heard any dealer complain or state that the Texas Company was threatening them or forcing them to buy any particular brand of TBA? (5531) A. No, sir.

Q. Your station is doing pretty well? A. Satisfactory.

* * *

Cross-examination by Mr. Dias:

Q. Yours is a social affair after the business meetings? A. Yes, sir.

Q. Tell us exactly what kind of problems you talk about during this social affair? A. Well, it might be price, the answers to some of it, how to overcome them, or some particular dealer might have some item that might be moving and he is doing a good job with, or some problem he might have mechanically on a new car. Covering quite an area as far as service station operation is concerned.

Q. Is there anything else that you talk about? A. Well, that is usually the main topics.

Q. Do you ever get into each other's problems, personal problems? A. Well, how personal? Not too much, no.

Harold Crawford, for Respondents—Cross

Q. Incidentally, I think in that picture, 70-B, was it, I (5532) noted the two Firestone batteries, that you called our attention to, and I think you stated that they were the same two that you mentioned earlier? A. Yes.

Q. How long have you had those batteries there? A. I have had those batteries probably since December.

Q. 1957? A. Yes.

Q. What is wrong with them? A. There is nothing wrong. I had those batteries for the simple reason that I run out of both Willard and Autolite of that particular size and replaced them with Firestone, which was handy at the time. My other suppliers is approximately 25 miles from me.

Q. Is there any other reason they haven't sold? A. I just don't push them, perhaps.

Q. What do you think of the Firestone battery? A. It is a good battery, although the acceptance on Autolite and Willard is better as far as I am concerned.

Q. Those Gates belts in your lube room, are they in Gates sleeves too? A. Yes, sir.

Q. Would you mind telling us the brand name of your spark plugs, filters, fan belts, and so on? Fan belts we have. A. Spark plugs I have AC and Champion. Filters I have AC (5533) and Fram.

Q. How about your chemicals? A. I have DuPont, I have the various additives. Do you want the names of those?

Q. The additives? A. Yes.

Q. Yes. A. I have Marvel oil, Hastings, CD-2. They are too numerous to name.

Q. On this credit card business, do you itemize these non-sponsored products when you sell them on credit? A. There isn't too much room to itemize them.

Arthur Neufeld, for Respondents—Direct

Q. That is as of January 1st of this year there isn't too much room, isn't that so? A. Yes.

Q. What about prior to this year? A. If it were a tire, I would just mark the word tire and the amount.

Q. You didn't designate Firestone, U. S. Royal, or anything else? A. No, sir.

Q. How about accessories? A. Well, it would be the same that way. If it were a filter, I would mark the word filter or battery or spark plugs.

Mr. Dias: I have nothing further.

* * *

(5534) ARTHUR NEUFELD was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and address to the reporter, please? A. Arthur Neufeld, 3601 Johnson Avenue, Bronx, New York.

Q. Is your station located in the Bronx, too? A. Yes, sir. 341 Grand Concourse, Bronx, New York.

Q. No matter what the columnists say, that is part of New York City, isn't it? A. Yes, sir.

Q. That station is a gasoline service station? (5535) A. Yes, sir.

Q. And you sell Texaco gasoline? A. Yes, sir.

Q. Do you lease the station from the Texas Company? A. Yes, sir.

Q. Do you have one of those leases which renews itself every year? A. Yes, sir.

Q. For how long have you been a lessee there? A. November 1946.

Arthur Neufeld, for Respondents—Direct

Q. About what is the average monthly gasoline gallonage of your station? A. 33,000 a month.

Q. In addition to the gasoline sales, do you handle TBA? A. Yes, sir.

Q. Do you like to handle TBA? A. It is a necessity to my business.

Q. Do you make money on TBA sales? A. I do.

Q. When you say "necessity," is it necessary for any other reason? A. It is part of my business to have TBA, and coincides with the gasoline and bringing in trade.

Q. And that is your own choice? A. Yes, sir.

(5536) Q. Do you have an understanding of what the Texas Company's policy is respecting TBA? A. I do.

Q. What do you think it is? A. Well, they have sponsored programs of tires and batteries, of Firestone and Goodrich.

Q. Do you know whether you have to buy some or all of the Firestone or Goodrich? A. No, sir.

Q. Do you understand that you may buy whatever you wish? A. I do.

Q. And do you feel free to do so? A. I do.

Q. And have you done so? A. I do.

Q. You have done so? A. I have done so.

Q. Has anybody from the Texas Company ever suggested to you that you had to buy some or all of the Firestone or Goodrich lines— A. (Interposing) No, sir.

Q. (Continuing) —and that if you didn't do so, your lease might be cancelled? A. No, sir.

Q. Or that the Texas Company would treat you badly in some (5537) other way? A. No, sir.

Q. No suggestions like that have ever been made to you? A. None whatsoever.

Q. Will you tell us the principal sources from which you buy your TBA? A. Firestone Company—Firestone stores.

Arthur Neufeld, for Respondents—Direct

Q. What do you buy from the Firestone stores? A. I buy tires and tubes, and accessories—filters and some additives.

Q. When you say "accessories," those are the only accessories you buy from them, is that right? A. That is correct.

Q. That is filters and some additives? A. Additives.

Q. Tell us the names of the companies from whom you buy most of your accessories. A. Bronx Gear and Bearing Company; Light Sales—they are out of business now; Schaffer; Veterans Auto Supply. That is about all I can remember right now.

Q. From the Bronx Gear and Bearing Company and Veterans Auto, you buy a whole list of accessories, do you not? A. I do.

Q. Additives and chemicals? A. Correct.

(5538) Q. Anti-freeze? A. Sometimes.

Q. You buy some Prestone? A. Bronx Gear and Bearing handle Dupont products—Zerex.

Q. You buy some from them? A. I do.

Q. And Vets Auto Supply? A. Prestone. I buy from them.

Q. And do you buy battery cables? A. Yes, sir.

Q. And bulbs? A. Yes, sir.

Q. Caps? A. Yes, sir.

Q. Rugs? A. Yes, sir.

Q. Cleaners? A. Yes, sir.

Q. Fan belts? A. Yes, sir.

Q. What kind of fanbelts? A. I purchase their fanbelts from Light Sales—Gates fanbelts.

Q. And radiator hose, is that also Gates? A. Thermo, Gates, whatever I can grab my hands on.

(5539) Q. Wherever you can get the best buy? A. Wherever I can get the best buy.

Arthur Neufeld, for Respondents—Direct

Q. You buy your spark plugs from the Gear Company and Vets Auto? A. And Bronx Gear and Bearing and M. Schaffer and Light Sales.

Q. How about Thermoid? A. I purchase from the above-mentioned, all of them.

Q. And waxes and polishes? A. I don't handle that.

Q. Wiper blades? A. I purchase from all of them.

Q. What kind of batteries do you handle and from what sources do you buy those? A. I handle the Exide battery and I buy that from the Electric Storage Battery Company, who is the Exide people.

Q. How many tires do you have in stock now? A. About ten.

Q. And those are Firestone? A. Firestone tires.

Q. Of all your tire sales, what percent do you figure you sell out of stock, and what percent do you get on a pick-up basis? A. The majority of my tires are on pick-up basis. I would say 80 percent pick-up, 20 percent in stock.

(5540). Q. Have you, while you were a dealer at this Texaco station, handled tires other than Firestone? A. I did, and I do. I handled Armstrong tires, U. S. tires, General tires, whatever the customer wants.

Q. At one time did you stock some Armstrong tires? A. I did.

Q. What was your experience with those? A. I used to purchase Firestone tires from a Firestone store salesman and he changed to—he resigned his job and went with the Armstrong people and I became friendly with him and I purchased Armstrong tires off him.

Q. Then, why didn't you continue with Armstrong tires? A. Well, they didn't stand up the way I expected, and the warrantee wasn't living up to its policy.

Q. Are you satisfied with Firestone? A. I certainly am.

Q. You handled Firestone, hadn't you, for many years before you became a Texaco dealer? A. Oh, I have been

Arthur Neufeld, for Respondents—Direct

handling Firestone tires—I was employed with the Socony-Vacuum Oil Company for 17 years—about 28 years.

Q. And during all that time you have been satisfied with the Firestone products? A. Yes, sir.

Q. Do you handle Firestone because you are afraid the Texas (5541) Company might cancel your lease or treat you badly if you didn't handle it? A. No, sir.

Q. You feel free to change if you could get a better tire? A. Anytime at all.

Q. Does public acceptance of Firestone have anything to do with your handling it? A. That is one reason, and their warrantee. They live up to their warrantee.

Q. How about price? A. Price, I get a good price. I get a good discount off the Firestone people. It gives me a margin to work with.

Q. Do you feel that Firestone is the best tire that you can handle from your own business point of view? A. Yes, sir.

Q. And is that the reason you handle it? A. I certainly do.

Q. Of all of your TBA tell me about what percent do you think is in tires and what percent is in batteries and accessories?

Mr. Dias: Can we have some dollar figures if we are going to have percentages?

Mr. Lorenzen: I will be glad to, if he has an estimate.

The Witness: I can give you an approximate figure on it. It is about 20 percent tires and about 80 percent. (5542) accessories. You can figure about \$200 a month tires and about \$400 to \$500 on accessories.

Arthur Neufeld, for Respondents—Direct

Q. You think your dollar figures are better than your percentage figures? A. Well, I can't quote exactly, but I am giving you a rough idea.

Q. You think your dollar figures are fairly accurate? A. I would say so.

Q. We will take those then instead of the percentages. A. All right.

Q. And you have a small amount in battery sales, do you? A. Yes, sir.

Q. In addition to the figure you have given us? A. That is correct.

Q. Do you display all of your TBA openly? A. Yes, sir.

Q. Has anyone from the Texas Company ever told you to hide it? A. No, sir.

Q. And you keep your Gates fanbelts on the usual Gates rack, do you? A. The Gates belts are in the lubratorium, in the front of the lubratorium on a rack.

Q. Do they have the Gates name? A. Above our heads, with the Gates name on them.

(5543) Q. And they have the Gates sleeves on the belts? A. Yes, sir.

Q. How about your Exide batteries, are those openly displayed? A. I have a small office, and as you drive in it is on an Exide rack. You can see the batteries. As you walk in you face it. It is right in the office on a rack, Exide batteries, with the Exide stand.

Q. You can see it in through the front door? A. Oh, yes, sir.

Q. I show you a photograph and ask you if that is your Exide battery rack? A. It is.

Mr. Lorenzen: I ask to have this marked as Respondent's Exhibit 71.

(Whereupon, the document referred to was marked Respondents' Exhibit 71 for identification.)

Arthur Neufeld, for Respondents—Direct

By Mr. Lorenzen:

Q. Have you had this Exide rack shown on Exhibit 71 for several years? A. I have.

Q. Has it looked like that? A. Yes, sir. Exact location, exact place.

Q. And does it look like that now? A. Yes, sir.

(5544) Q. I notice on that particular photograph that you have one of these distinguished service plaques above the Exide stand. Is that there all the time? A. No, sir. It hangs on the wall to the right of that door which is next to the Exide stand. We took this plaque off to identify the picture.

Q. And aside from that movement of the plaque over the Exide sign, is there any other change which you made before this picture was taken? A. None whatsoever.

. . .

(5546) Q. Have you ever been told to hide this TBA, Gates fan belts and Exide batteries? A. No, sir.

Q. Has anybody from the Texas Company ever suggested to you that your lease might be cancelled or you will be treated badly in any way if you didn't stop this display of Gates and Exide? A. No, sir.

Q. Do you at times pick up tires other than Firestone? A. I do.

Q. When you do, do you bring those to your station? A. I do.

Q. Are they there openly? A. Yes, sir.

Q. Has anyone from the Texas Company ever told you to take them out or not to handle other brands of tires? A. No, sir.

(5547) Q. Did your discontinuing with the Armstrong tires have anything to do with any suggestion made to you by the Texas Company? A. No, sir.

Arthur Neufeld, for Respondents—Direct

Q. That was entirely your own choice? A. That is right, and I will buy them again if a customer wants them.

Q. Can you estimate about what percentage of your total TBA* you buy from the Firestone supply point? A. About 25 percent, I figure.

Q. Dollar-wise, everything except the tires and filters, substantially you buy from other sources? A. Oh, yes.

Q. So we can figure that out from the dollar figures you gave us? A. Correct.

Q. Does the Texas Company do anything to assist you in marketing your TBA? A. Oh, yes.

Q. What do they do? A. We have quite a number of merchandising programs and the salesman is always merchandising and assisting. In all my years of experience I pick up quite a lot of merchandising ideas.

Q. Do you attend any dealer meetings? (5548) A. Yes, sir.

Q. Will you tell us how often those are held? A. Well, in our territory I would say about three or four a year.

Q. How many dealers attend? A. I think I missed one in eleven years.

Q. How many other dealers attend? A. How many other dealers attend? I am sorry. I misunderstood you. I think we have about thirty or forty.

Q. Do you have any larger meetings which take in more dealers than that? A. Not too often, but we had them where they took in practically 100 or 150 men.

Q. That included Manhattan as well as the Bronx, did it? A. And part of Westchester County.

Q. At those meetings do you get any tips on merchandising TBA? A. It is strictly a merchandising program. I do.

Q. At those meetings has anyone connected with the Texas Company ever threatened you, or in your presence

Arthur Neufeld, for Respondents—Cross

any other dealer of the Texas Company with lease cancellation or some other unfavorable conduct if they didn't handle some or all of the Firestone or Goodrich lines? A. No, sir.

Q. Do you get around to talk with other dealers? (5549) A. All the time.

Q. Are you fairly friendly with a lot of them? A. Most of them.

Q. At any time have any of the Texas dealers told you that the Texas Company has threatened them with lease cancellation or any other unfavorable conduct if they didn't handle some or all of the Firestone and Goodrich lines? A. No, sir.

Q. That has never happened? A. Never heard of it.

. . .

Cross examination by Mr. Dias:

Q. Have you ever heard of some dealers who thought they ought to buy Firestone or Goodrich because Texas suggested it? A. No, sir.

Q. Never heard of that? A. Never heard of it.

Q. What is the brand name of the filters that you carry? A. Up to date I carry the AC filter.

Q. And you buy those from Firestone? A. I was buying them from Bronx Gear and Bearing, Light Sales, M. Schaffer, and Firestone came out with the AC filter and their price is much cheaper, so I am buying from them.

(5550) Q. When did you shift to Firestone on the filters? A. On the filters I would say about a year and a half ago.

Q. What other filters do Firestone carry? A. They carry the Firestone filter, that I know, which I don't handle.

Q. Do they handle Fram, too? A. I don't know.

Q. Have you ever stocked Fram? A. Yes.

Arthur Neufeld, for Respondents—Cross

Q. Where did you get those? A. Would you mind repeating that?

Q. Where do you buy your Fram filters? A. I didn't buy many, but I think it was Bronx Gear and Bearing, and M. Schaffer.

Q. On the shift from Firestone to Armstrong, when did that take place? A. I would say about seven years ago.

(5551) Q. How long did you stay with Armstrong? A. I was with them—well, I had Firestone, I had Armstrong, whatever the customer wanted. I would say about eight months.

Q. That was about seven years ago? A. Yes, sir.

Q. On these pick-up tires, do you pick up whatever it is that the customer demands, or asks for? Is that the way you pick them up? A. Whatever the customer wants I pick up. Whatever is good for the business.

Q. What brand of plug do you carry? A. All plugs—AC, Autelite, Champion.

Q. And your wiper blades? A. Trico and Anderson.

Q. Is that Anderson? A. Anderson.

Q. You mentioned that you have ten Firestone in stock; is that correct? A. Yes, sir.

Q. Is that your normal stock of tires? A. I usually carry even less than that, sometimes.

Q. Do you carry anything other than Firestone in the station at this time? A. Right now, no. But our turnover is quick. Most of our sales are left at the station and we fill their needs.

(5552) Q. You have been buying the filters from Firestone for the last year or year and a half, was it, you say? A. I have been buying filters from Firestone a long time. But very few Firestone filters.

Q. What is the other brand that they sell that you do buy? A. AC and Firestone. I don't carry the Firestone no more.

Arthur Neufeld, for Respondents—Cross

Q. How long have you been carrying AC? A year or a year and a half? A. I handled AC for years.

Q. But you have been buying it from Firestone? A. Firestone since they took it in about a year and a half ago.

Q. Can you give us some idea of your volume of business in AC filters per month? Isn't that a fast-moving product? A. That is a great accessory for the gasoline filling station business. I would say we average about 6 to 8 filters a day.

Q. Are you open 7 days a week? A. Well, with the seventh day we cut down on Sunday maintenance on the rack. You can break it down on 6 filters a day because we close down Sunday. We don't close the lubratorium but we are not in action as we are for the six days.

Q. That is approximately 40 a week that you sell, anyway? A. Yes, sir.

Q. What is your monthly volume in filters? Let me explain. You mentioned these figures at \$200 a month for tires and (5553) \$400 to \$500 a month on accessories. You stated or indicated that your 25 percent could be figured from that \$400 to \$500. Would that be correct? A. Mostly 25 percent of that quotation is for filters.

Q. The \$400 to \$500? A. That's right.

Q. That would represent your filter purchases per month? A. Yes, sir.

Q. Is there another retail outlet for Goodrich or Firestone products in your area? A. Yes, sir.

Q. Will you tell us who and where? A. There is a Firestone store across the street from me, right opposite, that is called Mac's Auto and Body and Fender Company.

Q. What do they sell? A. Auto accessories, appliances and toys and tires and batteries, and so forth.

Q. Full Firestone line? A. Full Firestone line.

Q. Are there any other Firestone competitors near by? A. I have quite a number of service stations built around me. They all handle Firestone.

Arthur Neufeld, for Respondents—Redirect

Q. They all do? A. They all do.

(5554) Q. Do any of them handle Goodrich? A. That, I can't tell you.

Q. Is there any Goodrich store or Goodrich outlet anywhere nearby? A. Well, that is a good ways off. I would say about three and a half or four miles away.

Q. Do you ever stock or carry or pick up Goodrich tires? A. If a customer wants it. I don't stock them, but if he wants it we get them.

Q. Where do you get them? A. Off Goodrich Tire and Rubber Company, on East Fordham Road, Bronx, New York.

Q. That is quite a way from your station? A. Yes.

Q. There is no retail outlet for Goodrich products that you know of nearby? A. None whatsoever.

* * *

(5555) *Redirect examination by Mr. Lorenzen:*

Q. I am a little confused on the figure now. What do you think is your total TBA volume a month? Counting tires, batteries and accessories. Have you any estimate?

A. I know 80 percent is accessories, as I quoted, and 20 percent tires. But in dollars and cents I might be off that figure a little because I can't give you an exact quotation.

Q. As I understood it, your testimony was that of all of your TBA you thought you bought about a quarter of it from the Firestone store, or the Firestone supply point.

A. The 25 percent was mostly filters.

Q. Mostly the filters? A. That's right.

Q. What about your tires? A. Tires are very little, as you see.

Q. I see. They don't amount to much. Mostly 25 percent is for filters.

Max Edward Mandell, for Respondents—Direct

Q. But that also includes the tires? (5556) A. Well, I would say if you want to break it right down, split the straw, I would say 30 percent—5 percent tires, 25 percent—

Q. (interposing) That is what I wanted to get, the total figures. You figure you buy 30 percent of your total TBA from Firestone? A. Correct, sir.

. . .

MAX EDWARD MANDELL was called as a witness for the Respondent and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Royall:

Q. Will you state your full name to the reporter? A. Max Edward Mandell.

Q. Where do you live? A. 37 Westbourn Parkway, Hartford, Connecticut.

Q. Are you the lessee of a Texas service station? A. Yes, sir.

Q. Where is it located? A. 369 Woodland Street.

(5557) Q. You have the normal one-year renewable lease? A. That's right.

Q. How long have you been a lessee of that station? A. Approximately 13 years.

Q. What is your monthly volume of gasoline sales? A. Between 30,000 and 31,000.

Q. And do you sell a rather full line of TBA? A. Everything.

Q. What are your monthly sales of TBA? A. Approximately 40 percent tires, 15 percent batteries, and 45 percent accessories.

Q. What are your dollar sales, all of them, together of TBA? A. A month?

Q. Yes. A. I would say between \$2,200 and \$2,500.

Max Edward Mandell, for Respondents—Direct

Q. Why do you carry TBA? A. It is a part of the gasoline business, brings in customers and also increases your gallonage and part of the service station operation.

Q. You say you made a profit on it, too? A. Definitely.

Q. You say TBA increases gallonage? A. That's right.

Q. Did you take that station over, from someone else? (5558) A. That's right.

Q. What tires did your predecessor sell? A. He didn't have very many of anything. He was only in there a short period of time—about three months.

Q. What tires do you sell and stock now? A. Firestone, Goodrich, and Goodyear.

Q. Do you in addition to that pick up tires? A. We pick up as we need them.

Q. When requested by customers? A. That's right.

Q. Who does your recapping? A. New York Tire Company.

Q. That is not connected with any of the companies you mentioned? A. No, sir.

Q. What percent of your tires are Goodyears that you stock? A. I would say about 35 or 40 percent.

Q. What kind of batteries do you handle? A. Autolite and Delco.

Q. Are any of your accessories purchased from Firestone or Goodrich? A. None whatsoever.

Q. What would be your best estimate of what proportion of your total TBA—tires, batteries, and accessories—were not purchased from Goodrich or Firestone? (5559) A. I would say roughly about 70 or 75 percent.

Q. In connection with the batteries, what type do you have? Charge? A. They are 100 percent dry charge battery.

Q. Are you familiar with the policy of the Texas Company as to the independence of the dealer in purchasing his TBA? A. Yes, sir.

Max Edward Mandell, for Respondents—Direct

Q. Do you consider yourself entirely free to purchase what you want from whom you want? A. That's right, sir.

Q. Has the Texas Company in any way tried to force you to purchase a particular brand? A. They never have.

Q. Or have they threatened you or criticized you for handling the 70 to 75 percent of your goods as non-sponsored lines? A. Never.

Q. Would you feel entirely free to change the type of tires or any other of them that you purchase, or TBA if you thought it would be to your advantage to do so? A. Anytime I want.

Q. When did you first take on Greer? A. Approximately four or five years ago.

Q. Was there any criticism from the Texas Company when you did that? (5560) A. No.

Q. Are your tires and batteries and accessories displayed openly and publicly in your station? A. Yes. The station was renovated just approximately two years ago and new shelves and new tire racks that completely surround the bay are in full view.

Mr. Royall: I would like to have these exhibits marked for identification as Respondents' Exhibits 72-A and -B.

(Whereupon, the documents referred to were marked Respondents' Exhibits 72-A and -B for identification.)

By Mr. Royall:

Q. I hand you Exhibits 72-A and -B and ask you if they represent portions of your station as they have appeared since the time of the renovation? A. That's right.

• • •

Max Edward Mandell, for Respondents—Direct

(5561) Q. I notice on Respondents' Exhibit 72-A there are some dark-colored tires, and adjoining it on the same shelf are some tires covered with paper. What is the reason for that difference? A. All tires that are whitewalls come wrapped in paper. All major companies wrap their tires in paper, and the black ones are unwrapped.

Q. The five black tires which adjoin directly those colored, what brand are they? A. I can't see the reading, but from the tread design I would say they are Greer's.

Q. Do you know what the ones covered with paper are? A. These are Firestone, and these are Goodrich. This one is Greer. There is one Greer. I can tell by the labels.

(5562) Q. These two dark tires over to the left, what are they? A. Those are Firestone Town and Country.

Q. On 72-B, what part of your station is it? A. This is between the second and third bays. This is the bench that was built in the renovation period.

Q. Have these displays of your non-sponsored TBA been seen by a Texas salesman? A. Definitely. Everytime he comes.

Q. Has there ever been to you, any protest or threats in connection with your display of those? A. Never.

Q. Has there been any suggestion that you should remove them or conceal them? A. No, sir.

Q. And has that been the situation which existed during the entire time you have had the station? A. Yes, sir.

Q. Do you have any signs from any of these tire companies on your station? A. We have one Goodrich sign on the fence, and there is—when the station was renovated, Akron Truck put up new decals on the window.

Q. Where did those signs come from? A. They came from a truck from Akron.

Q. And none of them came from the Texas Company? (5563) A. No. Texas Company didn't have anything to do with it.

Max Edward Mandell, for Respondents—Direct

Q. What hours do you run your station? A. I might be the envy of a gas station operator. I operate from 7:00 in the morning to 6:30 at night. We close on Sundays and we close all holidays.

Q. Has there ever been any protest to you or complaint from the Texas Company about that? A. No, sir.

(5564) Q. Do you use Texas Company credit cards? A. Yes, sir.

Q. Do you put all types of goods on them? A. Practically everything.

Q. Everything? You mean sponsored and non-sponsored? A. Yes, sir.

Q. And has there ever been any complaint about putting a tire on that happened to be a Goodyear tire, or any accessories which were bought from others than sponsored companies? A. No, sir.

Q. As to these accessories and batteries which you say you purchased from others than Goodrich or Firestone, from whom do you buy your batteries? What supply points? A. Winkler Auto Supply and Magic Auto Supply.

Q. Do you buy also accessories from them? A. That's right, sir.

Q. Are they your major suppliers of those items? A. They are two of the three.

Q. Which is the third one? A. Acme Auto.

Q. What do they sell you? A. Delco batteries and other accessories pertaining to service station operation.

Q. In addition to that, do you buy from a Goodyear store? A. Yes, sir.

(5565) Q. The New York Tire Company? A. Yes, sir.

Q. And the Lincoln Auto Supply Company? A. Yes, sir.

Max Edward Mandell, for Respondents—Cross

Q. Do you make your own decision as to what type of TBA and from whom you purchase it? A. Yes, sir.

Q. Is that done in your own interest? A. That's right.

Q. Do you carry Gates' belts? A. Yes, sir.

Q. How are they displayed? A. They are in the third wall of the lube room, a rack, with Gates' sleeves on them.

Q. Do you attend dealer meetings? A. Approximately twice a year.

Q. Where are they held? A. Locally in Hartford at one of the hotels, generally.

Q. How many dealers usually are there? A. I would say 50 to 75 dealers from the area.

Q. At those meetings do you talk formally and informally with these dealers? A. That's right.

Q. And discuss all your problems? A. Of service station operation.

(5566) Q. During those meetings have you ever heard any Texas Company officials threaten or try to compel the purchase of TBA from Firestone or Goodrich? A. No, sir.

Q. Have you ever heard any dealer state that he had been threatened or criticized for buying non-sponsored goods? A. I never have.

. . .

Cross-examination by Mr. Dias:

Q. In connection with these dealer meetings you were asked whether or not dealers discussed all their problems with you. Would you have any way of knowing whether dealers discussed all their problems with you? A. No, not all their problems, but we discuss business in general.

Q. I believe you indicated that your station hours were a little unusual? A. That's right.

Q. Do you know anybody in the area who does the same thing? A. There are one or two stations in my immediate area who do the same.

Max Edward Mandell, for Respondents—Cross

Q. Are they Texaco? A. No, sir.

(5567) Q. Aren't you in an unusual location in that you are not near any big highways? A. I am only one block from it.

Q. Aren't there gas stations along those highways? A. They are open.

Q. And haven't you found through experience that on Sundays and holidays the motorist doesn't normally stop at your place? A. I am in a particular situation where I only have approximately less than one percent of transient business. Mine is a regular business.

Q. How often does the Texaco salesman call on you? A. I would say approximately once every two or three weeks.

Q. Can you tell us the purpose of the call? A. We hope his call is to deliver checks. But generally to take an order on oil or stuff like that, pertaining to the station.

Q. What sort of checks does he deliver? You say to deliver checks. A. Checks.

Q. I don't understand. Will you tell us what the checks are for. A. Rental checks that are rebatable to us.

Q. Rental? A. That's right.

Q. Rental on what? (5568) A. We pay a strict gallonage rental, and a check is written monthly, a rebate.

Q. Do you have a flat rental fee? A. No, I don't have a—well, I have a flat fee that I pay the gasoline truck when it comes in, and we work on a prorated ratio of gallonage.

Q. I still don't understand why there would be a rebate. If you pay so much per gallon why is there any rebate? A. Well, over a specific amount, it is a degrading scale.

Q. What else does he do ordinarily on his calls? Anything else that you can think of? A. Nothing. Asks if there is anything wrong with the station operation, and maintenance.

Max Edward Mandell, for Respondents—Redirect

Q. Do you buy your Firestone tires from whom? A. From the Capital Tire and Rubber Company, and Firestone store also.

Q. What other products do you buy from those two sources? A. Nothing. Just tires.

Q. Just tires? A. Just tires.

Q. How about Goodrich? A. Just tires.

Q. And what is your source of supply? A. B. F. Goodrich Company.

Q. How long have you been carrying the Autolite and Delco (5569) batteries? A. I would say approximately five percent.

Q. Didn't you at one time carry Firestone and Exide? A. When I originally came in I handled Exide. I didn't handle Firestone.

Q. Never handled Firestone? A. I might have had a few way back. But I don't recall.

Q. How about Goodrich? Any Goodrich batteries? A. We have had a Goodrich deal for, I think, a one-shot deal, a Price battery that we bought from them at one time. That was all.

Q. How long ago was that? A. It might be a year or two ago.

Q. What brand of filters do you carry? A. AC and Fram.

Q. Plugs? A. All three—Autolite, AC, and Champion.

Mr. Dias: That is all.

Redirect examination by Mr. Royall:

Q. Texas does recommend Firestone and Goodrich to you? A. They recommend, but we buy what we please.

. . .

A. James De Ambra, for Respondents—Direct

(5570) A. JAMES DE AMBRA was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and home address to the reporter please? A. A. James DeAmbra, 24 Edendale Avenue, Pawtucket, Rhode Island.

Q. Are you in the service station business? A. Yes, sir.

Q. What sort of gasoline do you sell? A. Texaco.

Q. At what location? A. 76 Newport Avenue, Pawtucket.

Q. As I recall, Pawtucket is practically part of Providence. A. East Providence.

Q. It is all in one big metropolitan sector, is it not? A. Yes, sir. That is right.

Q. Until recently you have been in there under one of these leases which renews itself each year? A. Yes, sir.

. . . .

(5571) Q. Your father has been in the business of selling Texaco gasoline, also, for some time, has he not? A. Yes, sir.

Q. After you came out of college you leased this station, did you? A. Yes, sir.

Q. Or did you work for your father for a while? A. I worked for my father for a short period and then I went on my own.

Q. And then you leased this station? A. Yes, sir.

Q. What is the gallonage of your station now? A. 45,000 to 50,000 per month.

Q. Per month? A. Yes, sir.

Q. Do you handle TBA at that station? A. Yes, sir.

A. James De Ambra, for Respondents—Direct

Q. Will you tell us your reasons for handling it? A. To make my station a one-stop station, to increase my profits.

Q. "One-stop," you mean the customer can get gasoline, TBA, (5572) and anything else he needs for his car. A. Yes, sir.

Q. Do you find that is a good idea? A. Very good.

Q. What has been and is your understanding of the Texas Company's TBA policy? A. They sponsor certain products, but we are free to buy whatever we wish.

Q. And they recommend Firestone and Goodrich to you? A. Yes, sir.

Q. And you know that? A. I do.

Q. And you have known that for some time? A. Yes, sir.

Q. You say you have also understood you could buy what you wanted to. Have you in fact done so? A. I have, yes, sir.

Q. Has anyone from the Texas Company ever indicated to you that they were not serious about that policy, and that in fact you had to buy some Firestone and Goodrich? A. No, sir.

Q. Nobody has ever told you that they would cancel your lease or otherwise treat you badly if you didn't? A. No, sir.

Q. Who are your principal suppliers of TBA? (5573) A. Mannolini Auto Supply; Fuller Battery Supply—

Q. Before you go further let's get you to tell us what do you buy from Mannolini? A. My chemicals, spark plugs, things that I run out of, actually. No tires whatsoever, or batteries.

Q. Do you buy fan belts and filters from them? A. Filters I do, yes.

Q. Thermostats? A. Yes, sir.

A. James De Ambra, for Respondents—Direct

Q. Generally do you buy a substantial portion of your TBA line from them? Of your accessories. A. Yes. It runs a pretty good percentage.

Q. The next company was— A. Fuller Battery Supply.

Q. What do you buy from them? A. I buy all my Willard Batteries from them.

Q. Is that the battery which you handle principally? A. Yes, sir. I am a distributor for it.

Q. You are a distributor for Willard? A. Yes, sir.

Q. How many would you say you have in stock now? A. 25 or 30.

Q. Do you handle any other kind of battery? A. I handle a local battery—Mule.

Q. And about how many of those do you have in stock? (5574) A. A dozen or fifteen.

Q. Do you have any other batteries in stock? A. No, sir.

Q. From what other sources do you buy your TBA? A. Stewart Distributors, Associated Distributors.

Q. You buy your Mule batteries from Associated? A. That is right.

Q. And also a general line of TBA items? A. Yes, sir.

Q. And from Stewart Distributors you buy a general line of TBA items? A. That is right.

Q. What other? A. Mellor's Auto Parts.

Q. What do you buy from them? A. Mufflers, brake lining, tail pipes.

Q. Any other types of TBA such as fan belts? A. Fan belts, radiator hoses.

Q. Do you buy anything from Stillman Tire Company? A. I buy all my Goodyear tires from Stillman Tire Company.

Q. You stock Goodyear tires? A. I stock Goodyear, yes, sir.

A. James De Ambra, for Respondents—Direct

Q. And how many Goodyear tires do you have in stock now? A. About fifty.

Q. In addition to Goodyear tires, do you stock any Firestone? (5575) A. Yes, sir. I have about fifty Firestone tires.

Q. Tell me from whom do you buy those Firestone tires? A. I buy the tires through my father.

Q. You do not buy them from a Firestone supply point, but from your father? A. From my father.

Q. Your father handles Firestone tires? A. Yes, sir.

Q. Do you know what kind of batteries he handles? A. Willard, Delco, and Autolite, I believe.

Q. What kind of fan belts do you have? A. Gates.

Q. Do you display those? A. I do, in a lube bay on a Gates wall rack.

Q. You display and advertise your Goodyear tires? A. Yes, sir.

Q. And do you display and advertise your Willard batteries? A. I do.

Q. What sort of seat cushions do you handle? A. I can't think of the name of it offhand.

Q. Crawford? A. Yes, Crawford. It is Crawford.

Q. Do you have a stand with the advertising? A. I have a display right in front of the door.

Q. Are you listed in the telephone book under Willard (5576) batteries? A. Yes, sir.

Mr. Lorenzen: I ask to have these pictures marked Respondent's Exhibits 73-A, B, and C, and D.

(The pictures were marked Respondent's Exhibits 73-A through D for identification.)

A. James De Ambra, for Respondents—Direct

By Mr. Lorenzen:

Q. I show you Respondent's Exhibit 73-A through D and ask you whether you can recognize those photographs.

A. The first one is the front picture of my station.

Q. That is 73-A. A. This one is the side window.

Q. That is 73-B. A. The battery stand is as you come in the office door to the right. It hits you right as you come in the door.

Q. That is 73-C. A. And this is the furthestest lubricatorium.

Q. That is 73-D. A. That is right.

Q. Do you know about when those pictures were taken?

A. About two months ago.

Q. For how long a time before that did your station have this type of advertising and display? A. All the time.

Q. What is that? (5577) A. All the time.

Q. And does it still have this type of advertising? A. Yes, sir.

Q. The Gates fan belts shown on 73-D is a permanent installation, is it not? A. Definitely.

Q. That has been there all the time? A. Ever since I opened it.

Q. And this Willard battery stand on 73-C, is that one you have all the time? A. That is permanent, yes, sir.

Q. And it is located in that situation? A. Yes, sir.

Q. On 73-B, which is your window, is that a permanent Willard decal? A. Permanent Willard decal.

Q. Do you change the other signs? A. I just changed, yes. I change the advertising matter each month. It is Goodyear. It is a Goodyear window.

Q. That is a Goodyear window and you always have a Goodyear advertisement of that type? A. Yes, sir.

Q. On 73-A, is that a typical display? A. That is typical, yes. This is something there every day of the week.

A. James De Ambra, for Respondents—Direct

(5578) Q. Do you keep this Crawford cushion stand out where it is available? A. Yes, sir, out front.

Q. And this Bardahl additive? A. Yes, sir.

Q. None of your accessories are bought from Firestone or Goodrich, are they? A. No, none at all.

Q. The only product of Firestone or Goodrich which you buy is from your father? A. That is right.

Q. And that is tires? A. Yes, sir.

Q. Do you have a Firestone decal on your station, also? A. Yes, sir, I do.

Q. I think that shows on one of these pictures. A. I believe so.

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(5580) Q. Has anyone from the Texas Company suggested to you that you should stop this display of tires and batteries and the advertising as shown on these Exhibits 73-A, -B, -C, and -D? A. No, sir.

Q. Have they told you they would cancel your lease or otherwise treat you badly if you didn't stop it? A. No, sir.

Q. Has this pattern of buying TBA existed ever since you opened your station? A. Yes, sir. Ever since the day I opened.

Q. You just said that there was some rehabilitation going on at your station. So that in the light of this kind of TBA that you are handling, the Texas Company is still rehabilitating your station? A. Yes, sir.

Q. What are they going to do to it? A. They are going to add another bay, porcelainize the front, and they have already bought a lot next door and macadamized it.

(5581) Q. And they have done that for your station? A. Yes, sir.

Q. And have they demanded of you that you give up handling the Greer tires or the Willard batteries or these other accessories? A. Definitely not.

A. James De Ambra, for Respondents—Direct

Q. Have you agreed to do anything like that? A. No, sir.

Q. I asked you some time ago about your lease. As a matter of fact, the Texas Company has now just recently given you a lease that runs for three years instead of one, hasn't it? A. That is right.

Q. Have you, as a condition of getting that lease, agreed to change your buying habits and TBA in any way? A. None whatsoever.

Q. You have made no commitment of that kind? A. No.

Q. Can you tell me approximately what percent of your TBA is in tires and what percent is in accessory items? A. A. Do you want a dollar value?

Q. Mr. Dias seems to like that, if you can give it to us. A. I would say about \$800 in tires; about \$200 in batteries, about \$1,100 or \$1,200 in other accessories.

Q. Are your tire sales divided about equally between Firestone and Goodyear? (5582) A. Just about, yes, sir.

Q. So that the only thing that you buy from Firestone and Goodyear would amount to about 20 percent of your total TBA? A. I think it will run a little closer to 30.

Q. Thirty percent? A. I would say so.

Q. Do you get any help from the Texas Company in connection with the marketing of your TBA? A. Yes, sir.

Q. What sort of help do you get? A. I have a sort of salesman who is always in helping me put up displays, even though they are non-sponsored.

Q. Do you get any help from meetings? Do you attend dealers' meetings? A. Yes, I attend meetings.

Q. Is TBA merchandising discussed there? A. Yes, sir.

Q. Do you get any help from that? A. I sure do.

Q. Do you find that you can apply that to the sale of your TBA items even if they are not Firestone? A. Yes, sir.

A. James De Ambra, for Respondents—Cross

Q. Do other dealers attend those meetings? A. Yes, sir.

Q. About how many? (5583) A. About 20 or 30.

Q. About how often are those meetings held? A. They are held about four or six times a year, I believe.

Q. About how many do you attend? A. I attend about two a year.

Q. At any time at those meetings has anyone connected with the Texas Company threatened you or in your presence any of the other dealers with lease cancellation or any other unfavorable conduct if they didn't buy some or all of the Firestone and Goodrich line? A. No, sir.

Q. At those meetings do you get to talk to some other dealers? A. I do.

Q. And do you discuss shop with them a little bit? A. Completely shop.

Q. During those discussions, has anything been said to you by those other dealers to the effect that they have been threatened with lease cancellation or other unfavorable conduct by the Texas Company? A. No, sir.

Q. Nothing like that has ever happened? A. No, sir.

Q. On what sort of stands do you display your tires? A. Goodyear.

Q. You don't happen to have any Firestone stands? (5584) A. No, sir. Just Goodyear.

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Cross examination by Mr. Dias:

Q. Isn't your station located in a sort of a vacation land? A. No.

Q. Isn't Pawtucket more or less a seaside resort? A. Oh, no. It is industrial.

Q. Do you go through it on the way to— A. (interposing) There is a nice race track across the street from me.

A. James De Ambra, for Respondents—Cross

Q. There is a race track across the street? A. Yes, sir.

Q. What I was curious about, the 45,000 to 50,000 gallons per month, I think you specified that that is what you are now selling. Is that your monthly average throughout the year? A. Yes, sir.

Q. Not only when the track is open? A. Oh, no.

Q. When was it that you got this three-year lease? A. I think it went into effect March 1st of this year.

Q. March 1st of this year? A. Yes, sir.

(5585) Q. Were you familiar with your one-year lease? A. Yes, sir.

Q. And the various provisions of it? A. Yes, sir.

Q. Are you now familiar with your three-year lease? A. Yes, sir.

Q. Can you tell us some of the terms?

Mr. Lorenzen: I object to that. The one-year lease is in evidence. It certainly speaks for itself.

Mr. Dias: I am asking him about the three-year lease. This is something new.

Hearing Examiner Kolb: The objection will be sustained.

By Mr. Dias:

Q. Do you have a copy of that three-year lease? A. Not with me, no.

Q. Can you send us a copy of it? A. It is the only copy I have.

Q. Can it be photostated or copied? Or maybe Texas will send us a copy.

(5587) The Witness: I can recall it is the same as the one-year lease except it is for a termination of three years.

A. James De Ambra, for Respondents—Cross

By Mr. Dias:

Q. What is the cancellation period involved? Is that on an annual basis, ten days' notice, or what is the situation in connection with that? A. I believe it is 30 days' notice.

Q. In other words, you have a three-year lease, terminable on 30 days' notice by either party; is that correct? A. I wouldn't be quoted on that. I would rather not be quoted.

Q. You don't know? A. I would say no.

* * *

(5589) *By Mr. Dias:*

Q. What sort of a station does your father have? It is a Texaco station? A. Texaco, yes, sir.

Q. Is he a distributor for Firestone? A. He is a distributor.

Q. Distributor? A. Yes, sir.

Q. Is he a lessee, also? A. Yes, sir.

(5590) Q. And does he buy his TBA products from Firestone direct? A. He buys his tires, I know. That is all I know he buys.

Q. Do you know where he buys those tires? A. Hartford, Connecticut.

Q. From a Firestone store— A. (interposing) Yes, sir.

Q. (continuing) —or supply point.

These meetings that you attend, are they regularly scheduled meetings? In other words, at the beginning of the year do you get a notice that there will be a meeting this date, that or the other? A. No, they notify us about a week in advance.

Q. About a week in advance? A. Yes, sir.

Q. Can you tell us how that comes about, who notifies you and what they say and so on? A. They send you a card,

A. James De Ambra, for Respondents—Cross

the salesman does, stating that there will be a meeting at such and such a place and at such and such a date. And usually they will let you know what the topic of discussion is.

Q. Are there any retail outlets of Goodrich TBA in your area? A. Yes, sir.

Q. Can you tell me who they are and where they are located? A. Ridge Tire Company, Pawtucket.

Q. Any others? (5591) A. Not in Pawtucket. That is the only one I know of.

Q. How about other Firestone retail outlets? A. The Firestone store, Pawtucket, Rhode Island.

Q. The Firestone store in Pawtucket? A. Yes, sir.

Q. Are there any other retail outlets located nearby?

A. Not in Pawtucket.

Q. Not in Pawtucket.

Are there other Texaco stations in Pawtucket? A. Yes, sir.

Q. Can you tell me how many, approximately? A. I would say 15 to 20.

Q. Are you familiar with those stations? A. Not too familiar.

. . .

(5592) Q. This rehabilitation of the station, you are paying for that, in effect, are you not? Doesn't your rent go up? A. No, sir.

Q. It does not? A. No, sir. I have a new rental, also.

Q. Sir? A. They gave me a new rental, also.

Q. They gave you a new rental? A. When they gave me a lease it was also signed with a new rental.

Q. Don't I read in there that you are not paying an additional amount? A. For one bay, sir. The additional rental charge for the one bay per month to be added.

Q. Tell us again what sort of rehabilitation they are going to do about the station. A. They are putting another

Pierce N. Johnston, for Respondents—Direct

bay on it, going to porcelainize it. They already bought the lot and macadamized that lot. They are putting in a new heating unit. And the only thing I am to pay for is \$25.00 a month for the new bay.

Q. And for how long? Is there any specified period?
(5593) A. For the termination of the lease.

. . .

(5594) PIERCE W. JOHNSTON was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and address to the reporter?
A. Pierce W. Johnston, 1405 Grant Avenue, Wilmington.

Q. Are you in the service station business, Mr. Johnston?
A. Yes.

Q. Where?
A. Pennsylvania Avenue and Union, Wilmington, Delaware.

Q. What sort of gasoline do you sell?
A. Texaco.

Q. Do you have a lease from the Texas Company?
A. Yes.

Q. It is one of those that renews itself each year?
A. Yes.

Q. How long have you been at this location?
A. I have been there a little over ten years as a dealer; 22 years before that as an employee.

Q. You handle TBA?
A. Yes, I do.

Q. Why do you handle it?
A. To increase profits, more gallonage.

(5595) Q. Have you had an understanding since you have been a lessee of the policy of the Texas Company respecting TBA?
A. Yes, I have.

Pierce N. Johnston, for Respondents—Direct

Q. What has been your understanding? A. They recommend Goodrich and Firestone tires. But my understanding is that I could buy anything that I wanted, any line that I wanted.

Q. And you understood they recommended the Firestone and Goodrich line to you? A. Yes.

Q. Have you followed that recommendation in part? A. Only as far as tires go, and not because the salesman of the Goodrich Company is a personal friend of mine.

Q. So it is just a coincidence? A. Yes.

Mr. Dias: I object to the characterization. I move that it be stricken.

Hearing Examiner Kolb: The statement of counsel may be stricken.

By Mr. Lorenzen:

Q. You stated that you knew the Goodrich salesman? A. Yes.

Q. And is that the reason you bought the Goodrich line?

A. That is the reason.

Q. You said that is only as far as tires go. So you do (5596) stock the Goodrich tire? A. I stock Goodrich tires.

Q. And how many do you have in stock now? A. Approximately 25.

Q. Of your total tire sales, what percent do you think is out of stock, and what percent is on a pick-up basis? A. Say, 75 percent on a pick-up basis.

Q. What kind of batteries do you stock? A. National and Delco.

Q. About how many National's do you have in stock? A. Between 18 and 20.

Q. And how many Delco's? A. Five or six.

Q. Do you have any others? A. No.

Pierce N. Johnston, for Respondents—Direct

Q. When you took over this station as a lessee, with what kind of TBA did you open that station? A. Fundamentally the same as we have now, with the exception of tires. At that time we were handling U. S. tires.

Q. Did you make any commitment when you signed the lease to buy Firestone and Goodrich? A. None whatever.

Q. And you opened actually with the U. S. tires and the National batteries? A. Yes, sir.

(5597) Q. Will you tell us the occasion for changing over later on from U. S. to Goodrich? A. The Goodrich salesman, Charles Yoder, called on me—as I said, he is a personal friend of mine—and gave me a very good price on Goodrich tires, so I stocked them.

Q. And is that the reason you went to Goodrich? A. Yes.

Q. Do you feel free to change back if you later get a better deal on a better tire at some other line? A. At any time.

Q. You do not feel that the Texas Company would cancel your lease or otherwise treat you badly if you did so? A. No, indeed.

Q. About what is the gallonage of your station? A. \$30,000 a month.

Q. Will you give us the names of some of the principal supply houses which supply your TBA? A. Miller Car Service; Adams Parts; Taylor Auto; Potts Battery; Keils; Holt Tire Company; Wood Krewsen; Sterling Auto.

Q. Do you buy all of your accessories from one of the houses other than Firestone or Goodrich? A. Yes.

Q. What kind of filters do you handle? A. Wix.

(5598) Q. Is that a pretty good business with you, too? A. Yes, very good.

Q. Do you display all of your TBA? A. Everything is displayed.

JA 1918

Pierce N. Johnston, for Respondents—Direct

Q. Do you have Gates fan belts? A. Thermoid and Goodyear.

Q. Thermoid and Goodyear? A. Fan belts.

Q. Do you display those? A. Yes, sir.

Q. With the names on them? A. Yes.

Q. What sort of a rack do you hang them on? A. I have a rack right in the lube bay.

Q. Does it have a name on it? A. Yes, sir.

Q. What? A. Thermoid. One rack has Thermoid and the other rack has Goodyear.

Q. And it has the names right on it? A. Yes.

Q. How about your National batteries? Are those displayed? A. They are displayed on National battery stands.

Q. In your store? A. Yes.

(5599) Q. Were any pictures taken, do you know? A. I don't think there were any pictures taken.

Q. These National batteries are openly displayed on National battery stands? A. They are.

Q. From Keils do you buy Goodyear tires? A. I buy Goodyear tires from Keils when a customer insists on Goodyear.

Q. What do you find about customers' demand for tires in your community? A. I find that Goodrich has wide acceptance from most all my customers. It is highly advertised on radio, TV. I have no trouble whatever selling them.

Q. Is that among the reasons for your handling that line? A. Yes. Consumers Digest, it is top on the list.

Q. Can you divide your TBA sales percentagewise among tires and tubes and batteries and other accessories? A. I think it will run 33 percent for each, approximately.

Q. Do you know about what the total of your TBA sales are on the average? A. It will run around \$3,000 a month.

Q. Of that \$3,000, one-third is in tires? A. Yes. One-third would be in batteries.

Pierce N. Johnston, for Respondents—Direct

Q. And that one-third includes your Goodrich tires plus any other tires that you may get for a customer who doesn't (5600) want Goodrich? A. Yes.

Q. And all the rest of your TBA is bought from supply points other than Firestone and Goodrich? A. Yes, sir.

Q. You say you openly display all your TBA. Does your Texas salesman or zone manager, whoever calls on you, know that you have this TBA which is not in the Firestone or Goodrich line? A. Yes, sir.

Q. Have they even told you to hide it? A. Never.

Q. Not to display it? A. Never.

Q. Have they ever suggested to you that they cancel your lease or otherwise treat you badly if you didn't dispose of this line of TBA? A. Never.

Q. Do you attend dealers' meetings? A. Twice a year.

Q. Do you find that the Texas Company is helpful to you at all in the selling of your TBA? A. I think they are very helpful.

Q. What do they do for you? A. Well, we get the dealer magazine once a month. At these (5601) meetings they show us films, how to approach a customer on the driveway, check his fan belt, radiator hose, wiper blades. They have been very helpful.

Q. At the dealers' meetings is anything discussed with respect to your merchandising of TBA? A. Yes.

Q. Do you find that helpful? A. Very helpful.

Q. Have you told me about how many dealers attend these meetings? A. Between 20 and 25.

Q. And they are held about twice a year, did you say?
A. Yes. Spring and fall.

Q. About how many do you attend? A. I try not to miss any.

Q. At those meetings, do you become acquainted with other dealers? A. Yes.

Pierce N. Johnston; for Respondents—Cross

Q. Talk with them? A. Yes.

Q. Discuss shop with them? A. Yes.

Q. At any time at those meetings has anyone from the Texas Company threatened you or in your presence any of the other Texas dealers with lease cancellation or any other (5602) unfavorable conduct or treatment if they didn't handle some or all of the Firestone or Goodrich line? A. No.

Q. Has any dealer ever told you, whether at these meetings or any other place, that any one from the Texas Company has threatened such dealer with lease cancellation or other unfavorable treatment if they didn't handle some or all of the Firestone and Goodrich line? A. No. .

Q. You feel free, do you, to sell and display and advertise whatever line of TBA you think is best for you? A. I certainly do.

Q. Are you listed in the telephone book under any TBA product? A. In the yellow pages, under "National Batteries".

Q. Do you do any advertising, radio or newspaper? A. Newspaper advertising, about four times a year, National batteries and Goodrich tires.

(5603) *Cross examination by Mr. Dias:*

Q. Do you have a trade name, Mr. Johnston? A. Yes.

Q. What is it? A. Mac's Service.

Q. No wonder I couldn't find it in the directory.

At these dealer meetings, has any dealer ever told you that he wasn't having trouble with Texaco? A. That he wasn't?

Q. Wasn't having trouble, yes. A. I have never had any comment they were having trouble.

Pierce N. Johnston, for Respondents—Cross

Q. You never had anybody tell you that they weren't having trouble. A. That they weren't? Would you repeat that?

Q. The fact is that they don't talk about their personal problems, do they? A. Not very much, no.

Q. On these tires, can you give us some estimate of the number of tires, Goodrich tires that you sell during the year? A. I have a list with me for the year. This is for 1957. We purchased \$7,435.99 worth of Goodrich tires.

Q. What other figures do you have? A. From Motor Service—

Q. What other tires? May I have a look at that? (5604)

A. Yes. (Handing)

Q. Why don't you read all these figures? A. All right.

Mr. Lorenzen: Why don't we just mark it?

Mr. Dias: I think it will be better if he just reads it in.

Mr. Lorenzen: All right.

The Witness: Motor Car Service, \$2,038.20. That is for Champion plugs, mufflers, tail pipes, and other parts.

By Mr. Dias:

Q. Before you go on: How much of that would be mufflers, tail pipes, and other parts? A. Mufflers and tail pipes would comprise about half of it.

Q. About fifty percent of it. Any other hard parts like piston rings? A. No, sir.

Q. Shocks and brakes? A. Shock absorbers.

Q. Brakes? A. Brake lining we get from Wood Krewsen. That is \$2,077. That is brake lining and oil filters.

Q. What would be the percentage there? How much brake lining and how much oil filters? A. I would say, again, about half.

Pierce N. Johnston, for Respondents—Cross

Q. In connection with that last one: In addition to brake (5605) lining, would there be any other so-called repair parts like mufflers, tail pipes, et cetera? A. No.

Q. Next? A. Holt Tire Company.

Q. What do you purchase there? A. \$1,716. And that is two-thirds of that for retreads. And the other would be for new U. S. tires.

Q. That is all you purchased from them? A. Yes.

Q. The next one? A. Keils, \$485. That is Goodyear tires.

Q. That is all you purchased from them? A. Yes.

Q. Next? A. Potts Battery, \$6,050. That is for National batteries, Champion spark plugs.

Q. Anything else? A. Yes. They do our generator work, too.

Q. Is that all that you get from them? A. Yes.

Q. Will you break that \$6,050 down as to generator work? A. \$4,500 of that is for batteries.

Sterling Auto, \$329. That is just parts, Ford parts.

Q. What kind of parts? Repair parts? (5606) A. Repair parts.

Q. That had been picked up for a particular job or jobs? A. A particular job.

Taylor Auto Sales, \$249.10. That is DuPont MOA detergent and mufflers.

Q. How much of that is for mufflers? A. About \$100.

Q. Anything else from that firm? A. No.

Q. Next? A. Delaware Tire, we have that, Goodrich tires.

Q. That is your Goodrich distributor, is it? A. Yes.

Q. Where are they located? A. 38th and Market.

Q. In? A. Wilmington. \$7,435.

Mr. Lorenzen: Is it clear that is not a duplication? You have asked him for that twice now.

William Linton, for Respondents—Direct

By Mr. Dias:

Q. That \$7,435 is the figure you first mentioned when I first started cross-examination? A. Yes.

Q. I think that is clear. A. Wood Krewsen, \$2,077.

(5607) Q. What is that for? A. Filters and brake lining.

Q. Can you break down that \$2,077 figure? A. I would say half of that is for brake lining and the other half filters.

Q. Fifty-fifty, brake lining and filters? A. Yes.

Delaware Oldsmobile, that is mufflers.

F. W. Diver Company, \$1,003. That is mostly mufflers.

A Chevrolet dealer, Adams Parts, \$11,589. That is fan belts, radiator hose, Delco batteries, AC spark plugs, battery cables, chemicals.

Firestone Stores, \$320. That is tires.

Q. That completes it? A. That completes it.

Q. Thank you very much.

Do you ever pick up batteries or other accessories at the request of customers? Do customers have a choice of batteries? A. They have a choice. Very rarely do we have to get another battery. They take our word for it on National.

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(5609) WILLIAM LINTON was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and home address to the reporter please? A. William Linton, 100 Flintlock Road, Newark, Delaware.

Q. How far is Newark from Wilmington? A. Seven miles.

Q. You are in the service station business? A. Yes, sir.

JA 1924

William Linton, for Respondents—Direct

Q. At what location? A. Capital Trail and McKee's Lane.

Q. In Newark? A. In Newark, Delaware.

Q. You are a lessee? A. Yes, sir.

Q. Do you have one of these leases which renews itself (5610) each year? A. That is right.

Q. For how long have you been a lessee at that location? A. I think sixteen months.

Q. Was that a new station? A. Yes, sir.

Q. So you opened it up as a new station? A. That is right.

Q. What kind of batteries did you have in stock when you opened up? A. Delco.

Q. Before you took that lease, did you make any commitment with the Texas Company to handle some or all of the Firestone or Goodrich line? A. No.

Q. No commitment whatever? A. No, sir.

Q. You do handle a more or less full line of TBA now, do you, at your station? A. That is right.

Q. Do you find it helps in your business? A. It does, yes.

Q. And that is why you do it? A. Yes.

Q. It is your own choice? (5611) A. It is my own choice.

Q. When you took over this new station, and up to the present time, what has been your understanding as to the Texas Company's TBA policy? A. I understand they sponsor Goodyear and Firestone.

Q. And did you have any understanding as to whether you had to handle the Goodyear or the Firestone line? A. I had an understanding that we didn't have to.

Q. That is, that you could handle what you wanted? A. That is right.

Q. And have you acted on that understanding? A. I have.

JA 1925

William Linton, for Respondents—Direct

Q. Has anyone from the Texas Company ever told you since you opened that if you didn't handle some or all of the Firestone or Goodrich line that your lease would be cancelled? A. No.

Q. Or that they would treat you badly in some other way? A. No.

Q. What is the amount of your gasoline gallonage, average? A. Approximately 20,000, monthly.

Q. Is that your average now? A. Yes.

Q. Will you tell us the sources from which you buy your TBA? A. Firestone.

Q. What do you buy from Firestone? (5612) A. Tires.

Q. How many Firestone tires do you have in stock? A. Approximately twelve.

Q. Do you stock any other tires? A. Yes.

Q. What other tires do you stock? A. Cooper.

Q. You are happy with them—I don't know that you heard Mr. Llewellyn testify—

Mr. Dias: I object.

By Mr. Lorenzen:

Q. You are happy with the Cooper tires? A. From the price line, yes, sir.

Q. You use them as a price-line tire? A. That is right.

Q. And your quality line is Firestone? A. That is right.

Q. And that is the way you handle them and sell them? A. Yes.

Q. You stock them both? A. Yes.

Q. Openly? A. Yes, sir.

Q. About what percent of your tires do you figure you sell out of stock and about what percent do you pick up? (5613) A. Approximately forty out of stock, sixty on a pick-up basis.

William Linton, for Respondents—Direct

Q. And you say that tires are the only things you buy from Firestone? A. Yes.

Q. Who are your other suppliers of TBA items? A. Kennett Auto Parts, at Kennett Square, Pennsylvania.

Q. Do they handle any tires? A. No.

Q. Do you buy most of your accessories and batteries from them?

Mr. Dias: I object to that. We haven't heard yet where he buys anything. Now we find out he buys most of his—let the witness testify.

By Mr. Lorenzen:

Q. Tell us what you buy from Kennett Auto Parts. A. Bowers batteries.

Q. Bowers? A. Bowers.

Q. How many of those do you have in stock? A. Approximately twelve.

Q. Do you buy any other batteries from them? A. No.

Q. What else? Go down the list of accessories items and tell us what you buy from them as best you know. (5614)

A. DuPont lines, chemicals and polishes, wiper blades; spark plugs; filters. Most anything in the automotive line.

Q. Fan belts? A. Fan belts—Gates fan belts.

Q. Cleaners? A. I didn't hear you.

Q. Cleaners—DuPont cleaners? A. Yes. Chemicals.

Q. Radiator hose? A. Yes.

Q. You said filters, did you not? A. Yes, sir.

Q. Spark plugs? A. That is right.

Q. Did you include waxes and polishes in chemicals when you said you bought chemicals from them? A. I did.

Q. Is that the house from which you buy most of your accessory items? A. Yes, sir.

William Linton, for Respondents—Direct

Q. And your batteries? A. The Bowers batteries. I buy the Delco batteries from Cecil Auto Parts, Elkton, Maryland.

Q. How many Delco batteries do you have in stock? A. Approximately ten.

(5615) Q. And how many Bowers? A. Approximately twelve.

Q. Do you have Firestone and Goodrich batteries in stock? A. I have one Firestone.

Q. What type of battery is that? A. That is a 12-volt battery, a premium grade battery.

Q. And that is the only one you have? A. Yes, sir.

Q. Is that about normal, a normal battery supply? A. Yes, sir.

Q. Do you buy any accessory items from any other suppliers? A. Taylor Auto Supply, Wilmington, Delaware.

Q. What do you buy from them? A. Some filters, wiper blades.

Q. Any fan belts? A. Some.

Q. But most of those you buy from Kennett? A. That is right, yes, sir.

Q. How about Newark Auto Parts? A. I did at one time. I don't any more, no.

Q. What did you buy from them? A. They had a delivery wagon that came by once a week, and whatever I happened to be in need of at the time I bought from them.

Q. Now they don't have the delivery wagon any more? (5616) A. No.

Q. So you don't buy from them? A. That is right.

(5617) Q. From whom do you buy your Cooper tires? A. Wilmington Tire Company.

Q. How do you display your tires? A. In racks.

Q. Inside and outside? A. Inside and outside; yes, sir.

William Linton, for Respondents—Direct

Q. What names do you have on those racks? A. I had the Firestone tires in the first rack, and the Cooper tires in the Cooper rack.

Q. And it has the name "Cooper" on it? A. Yes, sir.

Q. And anybody can see it? A. Yes, sir.

Q. These Gates' fan belts, do you display those? A. Yes, sir.

Q. On the Gates' rack? A. Yes, on the Gates' rack.

Q. With the Gates' name on top of it? A. That's right.

Q. And do the fan belts have the name "Gates" on them? A. They do.

Q. Has anybody from the Texas Company ever told you to hide any of these TBA items, or threatened to cancel your lease if you didn't get rid of the Cooper tires or the Bowers or Delco batteries? A. No.

(5618) Q. Or any of the accessories? A. No, sir.

Q. Have they ever told you they would treat you badly if you didn't buy the Firestone or Goodrich line? A. No.

Q. Do you feel free to buy whatever TBA items you yourself choose? A. I do.

Q. Is that what you have done? A. That is what I have done; yes, sir.

Q. You figure these lines that you sell are the best for your own business? A. I do.

Q. Can you tell me approximately what percent of your total TBA sales are in tires and tubes, and about what percent is in batteries and accessories? A. Tires, approximately 40 percent. Batteries and other accessories, 60.

Q. About how much of that is in batteries, do you know? A. Perhaps 20.

Q. Are you satisfied with your Firestone service and adjustment policy? A. Yes, sir.

Q. What do you find about your customer demand for Firestone tires? (5619) A. Well, the Firestone tire has

William Linton, for Respondents—Direct

good acceptance, I find, and they are not—to me they are not as hard to sell as perhaps some of the other brands. I get good service and their adjustment policy is good and that is about it.

Q. And are those among the reasons why you handle the Firestone? A. That is some; yes, sir.

Q. What assistance do you get, if any, from the Texas Company in connection with marketing your TBA? A. Well, the salesman, dealer meetings, magazine, and they also send window streamers, and also from the salesman himself, he helps out quite a bit.

Q. About how many dealers attend your dealers' meetings? A. Approximately 20.

Q. And about how often are those dealers' meetings held? A. I would say, about three times a year. I am not sure of that.

Q. About how many do you attend? A. I have attended all, so far, excepting one.

Q. At those meetings, has any one from the Texas Company ever threatened you, or any other dealer, with lease cancellation, or any other unfavorable treatment if you didn't handle some or all of the Firestone or Goodrich line? A. No.

Q. Have you become acquainted with the other dealers at (5620) these meetings? A. Some, yes.

Q. And have you talked with them? A. Yes.

Q. After the meetings? A. Yes, sir.

Q. Have they at the meetings—have any of them at the meetings or any other time told you or indicated to you that the Texas Company was threatening them in any way in connection with their TBA purchases? A. No.

Q. Did the Texas Company know that you were opening this new station with the Delco batteries? A. I—yes. The reason I hesitated on that, the salesman was there and he helped me open. So—

William Linton, for Respondents—Cross

Q. So he knew they were there? A. He knew they were there. He helped me put them up.

Q. By the way, the Texas Company gave you a Dealer's loan to help you open that station, didn't they? A. They did; yes, sir.

. . .

Cross examination by Mr. Dias:

Q. Can you break down your tire business a little for us, (5621) and tell us how many Firestone tires, and how many Cooper? A. Do you mean that I sell?

Q. Sell during the year, yes. A. I could approximate it for you.

Q. Firestone outnumbered the Cooper, did they not? A. Yes, sir.

Q. By how many, can you tell us that? A. I would say Firestone 60 percent, Cooper, 40.

Q. How many of those dealer meetings have you attended? A. I think, four.

Q. And have the representatives of either Firestone or Goodrich been there? A. No.

Q. Not at any of those that you attended? A. Not that I attended, no.

Q. You also mentioned that Firestone is not as hard to sell as other brands. What experience have you had with other brands? A. I meant by that, I think that Firestone has a better acceptance. I think people know them better.

Q. What do you base that on? A. Advertising; and service.

Q. Do you have more people calling for them? Or do you convince more people that they ought to buy Firestone? Or are they easier to sell? (5622) A. I think any name-brand product is easier to sell if the price is near the same.

William Linton, for Respondents—Cross

Q. Aren't U. S. Royal or Goodyear name-brands? A. Yes.

Q. Do you think Firestone sells easier than either of those two? A. As far as I am concerned, they do, yes.

Q. You are at the traffic circle there, aren't you? A. Yes, sir.

Q. Are there any retailers of Goodrich or Firestone products near you? A. Yes, I think so.

Q. Can you tell us which, Goodrich or Firestone, or both. Tell us first about Goodrich. A. You are talking retail?

Q. Yes. A. There is a retail Goodrich about two blocks —three blocks from me.

Q. Is that the closest one to you? A. Yes, sir.

Q. What about others? Are there any others, any other Goodrich retailers? A. I don't—not that I know of.

Q. How about Firestone? A. There is one Firestone retailer, perhaps a half-mile.

(5623) Q. Is that a store, a Firestone store? A. A service station.

Q. What about Goodrich? Is that a Goodrich store? A. Service station.

Q. Are there other Texaco stations in Newark? A. Yes, sir.

Q. Is Newark a suburb of Wilmington, or is it a separate little community? A. Newark is a city of its own.

Q. Do you know how many other Texaco stations are in Newark? A. Two.

Q. Just two others? A. Yes.

Q. Do you know those stations pretty well? A. Yes.

Q. Can you tell us what they carry in the line of TBA?

A. I can tell you tires. Their TBA, I couldn't.

Q. Tires? A. One has B. F. Goodrich and the other has Gates.

Burney Barker, for Respondents—Direct

Q. Gates? A. Gates.

Q. Is that all the other one carries, just the Gates? A. That is all I know of.

Q. On Goodrich, is that the station you referred to as (5624) being the other Goodrich retailer near your station? A. Yes.

Q. You don't know what type batteries that station carries? A. No, sir.

Q. Have you ever met those operators at your meetings? A. No. We are in different districts.

Q. Both in Newark but in different districts? A. Yes, sir. There is a dividing line there.

Q. How many of those dealers would you say you became acquainted with at dealers' meetings in the four times you have been there? Would it be many? A. Close acquaintance?

Q. Yes. A. Not any.

Q. None at all? A. No.

Mr. Dias: That is all.

. . .

(5625) BURNEY BARKER was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Please state your full name and local address to the reporter. A. Burney Barker, 1451 Cheshire Way, North Atlanta, Georgia.

Q. Mr. Barker, you are not a dealer selling Texaco gasoline at this time? A. At the present, no, sir.

Q. Will you tell me when you were a dealer? A. From 1948 to '56.

Burney Barker, for Respondents—Direct

Q. Where was the location of your station? A. At first, it was at Spring and Fifth, Atlanta, Georgia; then, I was in Brookhaven, on 4200 Peach Tree Road—4101 Peach Tree Road.

Q. You had leases at those locations from the Texas Company? A. Yes, sir.

Q. And those were the leases that expired at the end of each—not expired, but renewed themselves at the end of each year? A. Yes, sir.

(5626) Q. During the time when you were a lessee, did you hold some civic positions? A. Yes, sir.

Mr. Dias: I object. I don't see the relevancy.

Hearing Examiner Kolb: I don't think that is material.

Mr. Lorenzen: Your Honor, I would like to be heard on that, because I think it is quite important. The charge here is that these dealers are being pushed around by the Texas Company and compelled to buy a particular line of TBA. Of all the dealers we have looked for, assiduously, anywhere, the only one whom I found who is practically 100 percent in line is this gentleman, who has been the mayor of his town; he has been on the civic council; he has been active in all kinds of civic affairs. It seems to me it is most important to establish those factors in order that your Honor may evaluate his answer as to why he chose this particular line of TBA.

Hearing Examiner Kolb: I don't agree with you. I don't think being the mayor of a town or anything else has anything to do with this proceeding.

Mr. Lorenzen: Wouldn't it help your Honor to evaluate the man's character and the weight of his testimony to know that he has had positions of trust and confidence?

Burney Barker, for Respondents—Direct

Hearing Examiner Kolb: I have known some mayors in my life whom I had felt were not.

Mr. Lorenzen: I am speechless.

(5627) Hearing Examiner Kolb: The objection will be sustained.

Mr. Lorenzen: May my statement go as an offer of proof, your Honor, that I would like to make with this witness?

Hearing Examiner Kolb: All right. You can make an offer of proof.

Mr. Lorenzen: I would like to offer to prove that Mr. Barker has been a member of the city council and zoning board of the town of North Atlanta; that he has been mayor of the town of North Atlanta; that he has been active in the Elks and the Shriners, Moose, and Kiwanis; that he is a member of the peace officers association, and I think he still is active and holds a badge as a peace officer.

By Mr. Lorenzen:

Q. Mr. Barker, you gave us the opening date when you first became a lessee, did you? A. Yes, sir. '48 to '56.

Q. And the address of that station. That was until 1952. Is that right? A. Yes, sir.

Q. Then, you gave us the second set of dates. What were those? A. That was from '52 to '56.

Q. About what was the gallonage of the station which you (5628) operated from '52 to '56? A. Approximately 25,000 a month.

Q. Did you handle TBA at that station? A. Yes, sir.

Q. Will you tell us why you handled it? A. Well, I think most motorists like a one-stop service where they can get everything you have to offer there, and I think it helps your business to have a one-stop service.

Burney Barker, for Respondents—Direct

Q. Was it your own choice that you handle TBA? A. Yes, sir.

Q. Tell me, did you have an understanding at that time as to what was the Texas Company's TBA policy? A. Yes, sir. They recommended to me what they had to offer, what they have. But I had Firestone before I went with Texas.

Q. What was your understanding as to whether you had to handle the Firestone line? A. No, sir, I didn't have to handle any certain brand. We could buy as we liked.

Q. You understood— A. (interposing) As far as TBA goes.

Q. You understood that you could buy what you liked? A. As far as TBA, yes, sir.

Q. There wasn't any doubt about that in your mind? A. No, sir.

Q. Can you tell me, did you have discussions as to the policy (5629) of the Texas Company and as to whether you could buy what you liked with any particular employees of the Texas Company? A. The first person came to me was Mr. Walter Jones, when I went with them in '48, which he told me they sponsored some TBA programs, but he also told me at the same time that I was an independent dealer and was free to buy whatever I chose, and that also applied again when I moved out to Brookhaven on Peach Tree Road, and also Mr. Charley Fitts has told me the same thing.

Q. That is the Mr. Charley Fitts who has been zoning manager in Atlanta more recently than Mr. Jones? A. Yes, sir. Mr. Jones wasn't zoning manager. He was, I guess you would call him—

Q. (interposing) Salesman? A. A salesman.

Q. And the Charley Fitts is the Mr. Charles Fitts who was zoning manager? A. Yes, sir.

Burney Barker, for Respondents—Direct

Q. And you had that understanding that you could buy from whomever you pleased after you talked with Mr. Fitts? A. Yes, sir.

Q. As well as Mr. Jones? A. Yes, sir.

Q. There is no doubt in your mind about that? A. That is correct, sir.

(5630) Q. You said you handled Firestone. Tell us how you came about to handle Firestone and why you chose it? A. Well, if I may explain the first part of it, I came out of service and I bought half of a station with Shell at that time. My partner had never carried any TBA at all. He only sold gas and oil. I wanted to carry the full line, so I, in turn, called Firestone out on Whitehall Street at that time, and their salesman came out, and I ordered Firestone from them and TBA at that time.

And I have Firestone ever since.

When I moved over to Spring and Fifth, from Shell—I was at Piedmont and Forest with Shell at first, and I moved from Piedmont and Forest with Shell to Fifth and Spring with Shell, and the station there was carrying Good-year tires, which is a good tire also, but I still liked Firestone. I took out the Goodyear and put Firestone in the station.

When I moved over to Texaco, in '48, I still carried Firestone. There was some stuff there that was not Firestone at that time, but I installed Firestone all the way through.

Q. And was that your own choice? A. That is my own choice.

Q. Did that have anything to do with the Texas Company telling you what kind of TBA you had to handle? A. No, sir. I think, as far as I was concerned, it was a good tire. Firestone had one of the best tires made. And (5631) that isn't the only reason I carried them. I had

Burney Barker, for Respondents—Direct

one of the best deals they had. I had an "A" deal which is the same buying power as their stores carry, and I couldn't get a better deal from nobody else.

Q. You say you couldn't have gotten a better deal? A. I couldn't have gotten a better deal from no one else. And they had national advertising, so I couldn't see where I was wrong in doing it.

Q. Now about the other Firestone item? You also chose those, did you not? A. I carried everything Firestone and Texaco throughout.

Q. Was that your own choice? A. That is my own choice.

Q. Why did you carry the Firestone batteries and the line of Firestone accessories? A. Well, I didn't—one of the main reasons in carrying the stuff, I had several reasons. I had one salesman call on me from Firestone, and one from Texaco. I only had two men call on me. I had one catalog to go by, as far as prices were concerned. I didn't have to look through catalogues to find my prices. I didn't worry about salesmen contacting me all the time and tying me up. I think it is a better deal throughout to have one brand of stuff in your place.

Q. So you found it was simplest to deal only with one salesman and one catalog and one set of prices? (5632)

A. I sure did.

Q. And those were among your principal reasons for staying with the Firestone line; is that correct? A. With the national advertising, too, they had, with that.

Q. And that was something you made up your own mind about; is that correct? A. Yes, sir.

Q. How did you find your customers' acceptance of the Firestone products to be? A. Very well. Firestone was very acceptable, and I think the majority of people took my word, trusted me in doing what I thought was right

Burney Barker, for Respondents—Direct

for their car, and I think that went a long ways with saving the customer.

Q. Toward the latter part of your operations in the service station, do you remember there came a time when Firestone introduced dry charge batteries? A. Yes, sir.

Q. Did you handle those? A. Altogether, sir. As soon as I got rid of my wet charge I handled dry charge altogether. That is the only thing I handled.

Q. Did you find that better from the point of view of your business? A. Yes, sir. You always had a fresh battery.

Q. And you found that to be advantageous? (5633)
A. Yes, sir.

Q. How did you first happen to get sold on Firestone tires?

Mr. Dias: I object, your Honor. I think that has been gone into at quite some length.

Mr. Lorenzen: He told us he put it into the Shell station but he didn't say why.

Mr. Dias: I don't think it will make any difference if it has to do with the Shell station. I think that is pretty well covered.

Mr. Lorenzen: I will withdraw it.

By Mr. Lorenzen:

Q. Did you obtain any help from the Texas Company in connection with the marketing of your TBA? A. Yes, sir, I did.

Q. What sort of help did you get? A. The salesman would give us assistance if he could, and help us in arranging our stock and displaying our merchandise. We got dealer magazines monthly. We had regular meetings throughout the year. I think that is sufficient, I believe.

Burney Barker, for Respondents—Direct

Q. Did you use this S-75 follow-up system? A. I did, altogether, sir.

Q. And that was something the Texas Company furnished its dealers to help TBA sales; is that right? A. Yes, sir.

Q. About how many dealers attended the dealers' meetings at (5634) which you were present? A. Well, they broke it up. They couldn't have them all in one day, of course, and they divided it up. The one I would go to there would be 15 or 20 at the one meeting.

Q. About how many of those meetings were held during the year? A. Approximately three or four a year, sir.

Q. About how many of those did you attend? A. I don't recall missing a one of them.

Q. Both inside and outside the meetings did you become acquainted with dealers who sold Texaco gasoline? A. I knew most of them personally, yes, sir.

Q. At any time did you hear any representative of the Texas Company threaten any dealer with lease cancellation or any other adverse treatment if he didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Did any of the dealers with whom you became acquainted ever tell you that any such threat, that is, of lease cancellation or unfavorable treatment, had been made to them by anyone from the Texas Company if they didn't handle the Firestone and Goodrich line? A. No, sir.

Q. Did anyone ever complain to you that Mr. Fitts had told them that if they didn't handle a Firestone or Goodrich line that (5635) they would be treated with disfavor by the Texas Company? A. No, sir.

Q. You are not employed by the Texas Company in any way, now? A. No, sir.

Q. You own your own garage business; is that right? A. Yes, sir.

Burney Barker, for Respondents—Cross

Q. And by the way, do you still have your Firestone franchise? A. I still have it, sir.

Q. And you don't sell any Texaco gasoline, do you, at this garage? A. No, sir.

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Cross examination by Mr. Dias:

Q. Did the Firestone people ever attend any of these meetings? A. Not the dealer meetings.

Q. Never were there? A. No, sir.

Q. There has been a lot of discussion about these dry batteries. Can you tell us something about them? Do you as a dealer have a little more to do with a dry battery than (5636) with a wet battery? A. How do you mean, more to do?

Q. As I understand it, you take a wet battery and you put it in the car and you are away. With a dry battery, don't you have some preparation? A. You have to put acid into it.

Q. Sir? A. You have to pour acid into it.

Q. Don't you have to give it a quick charge? A. Not necessarily, no, sir. At first, you did. It is very seldom you have to do that anymore.

Q. When did that change? A. Frankly, I have quick-charged very few of them.

Q. Don't you recall when Firestone first came out there was an instruction sheet came with the dry charge and they recommended 15 to 20 minutes? A. They recommended, sir, but I have a quick charge—frankly, I didn't bother.

Q. You would let the customer's generators pick it up? A. Pick it up right away, sir.

Q. So that customer got maybe a half charge or three-quarter charge battery in his car, is that right? A. It doesn't mean that definitely, sir, I wouldn't say that. Be-

Milton Ellington, for Respondents—Direct

cause if he drove one block, if his car was even cranked, if his motor started up, his battery was charging. I wouldn't (5637) say he got a half charge battery.

Q. On the other hand, with a wet battery the station would keep it fresh or supply it, and he would have a fully-charged battery? A. A wet battery might be two years old if you buy it some places. It is possible. It might be on the gentleman's shelf two years. That is not as good as you could get.

Q. I say if the battery is fresh. A. If it is fresh. But you can't always be sure of them being fresh, sir.

Q. That is true.

My point is, is there any difference between a fresh wet battery and a dry charge battery in performance or any other way? A. I wouldn't think so, if it is fresh, no, sir.

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(5638) MILTON ELLINGTON was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and address to the reporter please? A. Milton Ellington, 419 North Church Street, Thomaston, Georgia.

Q. Are you in the service station business? A. Yes, sir.

Q. At what location? A. 107 North Church Street, Thomaston, Georgia.

Q. Do you have a lease? A. Yes, sir.

Q. From the Texas Company? A. Yes, sir.

Q. Is that one of these leases which renews itself each year? A. Yes, sir.

Q. And you sell Texaco gasoline? A. Yes, sir.

Milton Ellington, for Respondents—Direct

Q. Approximately what is the gallonage of your station? (5639) A. 18,000 a month.

Q. How long have you been at that station? A. Almost eleven years.

Q. Do you do anything else other than operate this service station at the present time? A. What is that?

Q. Do you do anything else besides operate this service station? A. Yes, sir. I am a member of the City Council in Thomaston.

Q. Do you handle any TBA? A. Yes, sir.

Q. Will you tell us your reasons for handling it? A. I handle it to make the business more profitable.

Q. Have you had an understanding as to the Texas Company's TBA policy since you have been in that station? A. Yes, sir.

Q. What has that been? A. I know that Texaco has a suggested program, but I know I am free to sell anything that I want to.

Q. And have you acted on that assumption? A. Yes, sir.

Q. Do you know that the Texas Company recommends the Firestone and Goodrich lines? A. Yes, sir.

Q. Will you tell us what sort of tires you stock now? (5640) A. I stock mostly Dunlop tires.

Q. About how many of those do you have in stock? A. Approximately thirty.

Q. Do you have any Firestone in stock? A. No, sir.

Q. You do have some Goodrich, don't you? A. Yes. I have four. I had them yesterday.

Q. Four? A. Yes, sir.

Q. That is all? A. Yes, sir.

Q. How about batteries? What kind of batteries do you stock now? A. Delco and US.

Q. How many Delcos? A. Approximately twenty.

Q. How many US? A. I have two.

JA 1943

Milton Ellington, for Respondents—Direct

Q. From what sources do you buy your accessories?

A. I buy them from Karp Auto Parts; Keenan Auto Parts; E. L. Johnston and Company; and Auto Supply and Equipment Company.

Q. None of those are Firestone or Goodrich distributors, are they? A. No, sir.

Q. So the only thing that you buy from either Firestone or (5641) Goodrich is a small amount of Goodrich tires? A. Yes, sir.

Q. Is that more or less on a pick-up basis? A. Yes, sir.

Q. Do you have any particular reason for handling so much of the Goodrich product as you do handle? A. Yes, sir. In the town where I live, the B. F. Goodrich Company has a tire cord mill there. It is the largest mill in the world. About thirty percent of our population is employed by the B. F. Goodrich Company. I have customers that work there, and they want Goodrich tires. I buy Goodrich tires for that reason.

Q. Has anyone from the Texas Company ever told you that they would cancel your lease, or treat you badly in some other way if you didn't handle some or all of the Goodrich or Firestone line? A. No, sir.

Q. Do you display all of your TBA? A. Yes, sir.

Q. Do you have any kind of a Dunlop tire sign? A. Yes, sir. I have a Dunlop tire sign in my window.

Q. Do you have any Goodrich or Firestone signs or decals on your windows? A. No, sir.

Q. How about your batteries; do you display those? (5642) A. Yes, sir.

Q. Openly? A. Yes, sir. Right in the sales room.

Q. Right in the sales room? A. Yes, sir.

Q. With the name Delco on them? A. Yes, sir. It is on the Delco battery rack.

Q. By the way, you had some pictures taken in your station, did you? A. Yes, sir.

Milton Ellington, for Respondents—Cross

Q. Do you know what has become of them? A. No, sir, I don't.

Q. You don't have them? A. No, sir.

Q. What sort of fan belts do you have? A. Dayton.

Q. Also, radiator hose? A. Yes, sir.

Q. Do you display those? A. Yes, sir.

Q. How? A. I have them in the sales room on racks above the windows.

Q. Do they have the name Dayton on them? A. Yes, sir.

Q. Has anyone from the Texas Company ever told you you would (5643) have to stop this display of Dunlop tires and Dayton belts and hose and Delco batteries or else they might cancel your lease? A. No, sir.

Q. Or they would be mean to you in some other way? A. No, sir.

Q. Nothing like that? A. Never have.

Q. Does the Company regularly paint your station and maintain your property? A. Yes, sir. They painted my station once a year.

Q. As of the present time you do have some wet-charge as well as some dry-charge batteries? A. I only have two wet-charge batteries. Those are US Royal.

Q. Do you find the dry-charge more desirable? A. Yes, sir.

Q. And are you in the process of changing entirely to the dry-charge? A. Yes, sir.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. Mr. Ellington, did you give us the date that you started in the station? A. March 3, 1948.

Q. Was that a brand-new station? (5644) A. No, sir.

Q. From whom did you get the station? A. I bought it from G. F. Haygood.

Alfred A. Franklin, for Respondents—Direct

Q. Haygood? A. Yes, sir.

Q. Do you know who owns this property? A. Yes, sir. It belongs to the Texas Company.

Q. Where do you purchase your gasoline? A. I buy it from a consignee.

Q. Where is he located? A. In Thomaston, Georgia.

Q. What is his name? A. J. F. Haygood.

Q. What is the relationship between you and Mr. Haygood? A. He is my brother-in-law.

Mr. Dias: Nothing further.

(Witness excused.)

Mr. Lorenzen: Mr. Franklin.

Whereupon ALFRED A. FRANKLIN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and home address? (5645)

A. Alfred A. Franklin, 315 Linwood Avenue, East Point, Georgia.

Q. Are you in the service station business? A. Yes, sir.

Q. At what location? A. 718 Ponce de Leon Avenue, Atlanta, Georgia.

Q. Do you sell Texaco gasoline? A. Yes, sir.

Q. Do you have a lease from the Texas Company? A. Yes, sir.

Q. Is that one of these leases which renews itself each year? A. Yes, sir.

Q. Before that time, were you employed by the Firestone Company? A. Yes, sir.

Q. For how long a period of time? A. Approximately nine years, sir.

Alfred A. Franklin, for Respondents—Direct

Q. During that time were you doing anything else other than working for Firestone? A. I was going to school at night, sir.

Q. Did you get a college and a law degree? A. Yes, sir.

Mr. Dias: I object. May I have a ruling?

Hearing Examiner Kolb: Let the answer stand.

(5646) *By Mr. Lorenzen:*

Q. When did you become a lessee of the Texas Company? A. Eight years ago, sir.

Q. What is the gallonage of your station now? A. Approximately 38,000 a month.

Q. When you took that station did you have any understanding as to the Texas Company's TBA policy? A. Yes, sir.

Q. What was your understanding? A. That they sponsored Goodrich and Firestone, but as an independent dealer you had a choice of any product you wished to sell.

Q. Was that told you specifically? A. Yes, sir.

Q. Have you had anything to do with Mr. Charles Fitts while you have been a lessee of the Texas Company? A. Yes, sir.

Q. Have you ever had any discussion with him about the Texas TBA policy? A. Not in regard to the TBA problem—I mean, policy.

Q. He was a supervisor, was he, of the man who talked to you? A. No, sir. I became a dealer before Mr. Fitts came to Atlanta.

Q. Who was the man who talked to you about this? A. Mr. Strickland and Mr. Andrews.

(5647) Q. Who was salesman of the Texas Company? A. Yes, sir.

Q. Just before you took over this station was the time when you were employed by Firestone; is that correct? A. Yes, sir.

Alfred A. Franklin, for Respondents—Direct

Q. I assume you handle Firestone at the station? A. Yes, sir.

Q. Did you on your own place the order for Firestone when you took over the station? A. I didn't understand you.

Q. I will withdraw the question.

Did you make any commitment to the Texas Company when you took over the station that you would handle Firestone or any other TBA products? A. No, sir.

Q. Whatever you took was your own choice? A. Yes, sir.

Q. And you chose Firestone? A. Yes, sir.

Q. You buy nearly all of the TBA, do you not, from Firestone? A. Yes, sir.

Q. What do you find with respect to the customers' acceptance of the Firestone product which you sell? A. Good, sir.

Q. If you felt that the acceptance was dropping and you could (5648) do better with some other line, would you feel free to handle it? A. Yes, sir.

Q. And would you do so? A. Yes, sir.

Q. Have you been satisfied with the service, adjustment policy, and price that you have gotten from Firestone? A. Yes, sir.

Q. What about your own satisfaction with the quality of the Firestone line? A. Well-pleased, sir.

(5649) Q. Do you get any help from the Texas Company in connection with marketing your TBA? A. Yes, sir.

Q. What sort of help do you get? A. We have furnished a monthly Texas magazine. We are invited to a number of product meetings per year where the products and how it works are explained. We are also invited to the annual sales meeting sponsored by the Company. The Company also furnishes us with banners which advertise

JA 1948

Alfred A. Franklin, for Respondents—Direct

our gas and motor oils. And in addition to that our sales representative comes by every so often and sits down and talks with us in regard to our business, personal solicitations, solicitations by 'phone, through the S-75 which they furnish us. And in addition to that we always feel free to call any of the boys above the salesman in regard to help.

Q. You said you had—did you say how many dealers' meetings you had a year? A. They vary, sir, from five to six, including the product meetings.

Q. About how many dealers are at those meetings? A. On the product meeting they try to break it down where the dealers don't have to go too far to attend, and it will be 20 to 25 at those.

Q. How about the other meetings? A. It will be 150 to 200.

(5650) Q. At those meetings, have you had occasion to become acquainted with the other dealers? A. Yes, sir.

Q. Have you talked to them? A. Yes, sir.

Q. Informally after the meeting? A. Yes, sir.

Q. At any of those meetings has any one from the Texas Company ever threatened any Texaco dealer with lease cancellation or with any other discriminatory conduct if he didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Has any dealer with whom you have become acquainted ever told you that the threat to cancel his lease or otherwise treat him badly has been made to him by the Texas Company if he did not handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. No dealer has ever made any such statement? A. That's right.

Q. Let me call your attention specifically to the testimony appearing on page 2108 of the stenographer's minutes. Mr. Boyd asked Guy Walter Scott, a salesman of the G. T. Duke Company, the following question:

JA 1949

Alfred A. Franklin for Respondents—Cross

"What about the Ben Franklin Station on Ponce De Leon, Mr. Scott? What reason did he give you, if any, for not (5651) buying from you?"

"Answer: He was satisfied with the line of tires he was carrying, and he didn't think it advisable to put in any different line."

Now, I ask you to assume that Ben Franklin on Ponce De Leon Avenue is you. A. I am sometimes referred to as that, sir.

Q. As Ben Franklin? A. Yes, sir.

. . .

(5652) Q. I am asking you whether you ever told Mr. Guy Duke that you didn't want to handle his tires because it would be inadvisable for you to do so for fear of some reprisal from the Texas Company? A. No, sir; I never told him that with that in mind.

Q. And if you told him that it was not advisable, that had to do with business considerations? A. Yes, sir. I didn't want to handle two lines of tires.

Q. And it had nothing to do with any pressure or anything like that from the Texas Company? A. No, sir.

. . .

Cross-examination by Mr. Dias:

Q. Mr. Franklin, let me hand you the transcript, page 2108, and ask you to read lines 17 to 19. A. All right.

Q. Does that indicate that you told him anything that you didn't tell him? A. I don't recall the exact words that was used. But this (5653) would cover the context of our conversation.

Q. As it is written in the transcript? A. Only I don't recall the word "advisable". But I mean I do recall hav-

Alfred A. Franklin, for Respondents—Cross

ing talked with him after he showed me his tires, and I told him I didn't think I would care to add another line to my business.

Q. You are an educated man.— Doesn't that indicate to you, doesn't that say the same thing in substance that you mentioned?

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A. With the word "advisable" in there, sir, it would be my decision as to whether I wished to carry another line of tires only, and not because it might have been construed as another interpretation.

(5654) *By Mr. Dias:*

Q. The point is, would you say that this gentleman was not testifying truthfully when he quoted the language that he quoted as having come from you? A. Sir—

Q. Regardless of what your meaning was? A. It was some several years ago, and I do not recall the exact words, sir.

Q. You gave us a gallonage of 38,000 per month? A. Yes, sir.

Q. You didn't tell us which station that was. Would you mind telling us which one of your stations? A. 718 Ponce De Leon.

Q. That is Station No. 1? A. Yes, sir.

Q. When did you open Station No. 2? A. My brother opened it in May, a year ago. This past May, a year ago.

Q. May of 1957? A. Yes, sir.

Q. You have an interest in that station? A. Yes, sir. I am financing it.

Q. What is the gallonage in that station? A. Approximately 28,000, I believe.

Q. And is the full line of Firestone TBA also carried in (5655) that station? A. No, sir.

JA 1951

Alfred A. Franklin, for Respondents—Cross

Q. What do you carry there? A. My brother runs it and he uses the U. S. retreads.

Q. U. S. retreads? That is in the tires? A. Yes, sir.

Q. And is that all he handles in tires? He handles no new tires? A. He handles the Firestone tires.

Q. Then I guess I don't understand. What are these U. S. retreads? A. Recaps, sir.

Q. You mean he handles those, too? A. Yes, sir. Instead of handling Firestone recaps he handles U. S. recaps.

Q. For new tires he handles Firestone? A. Yes, sir.

Q. What about batteries and accessories? A. Firestone.

Q. How about Station No. 3? A. With the exception of some special recaps that they have bought from U. S., it is 100 percent Firestone.

Q. And what is your monthly gallonage there? A. Approximately 20,000.

Q. Can you give us some idea of when that station opened? (5656) A. Last December, sir.

Q. Are all these stations leased stations? A. Yes, sir.

Q. In addition, you have another one, did you, to open soon, or has opened, isn't that so? Aren't you opening a fourth station? A. Yes, sir.

Q. Have you signed up for TBA products for that station yet? A. Yes, sir. It will be Firestone.

Q. It will be Firestone? A. Yes, sir.

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Lee R. Moss, Jr., for Respondents—Direct

(5661) LEE R. MOSS, JR. was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Please give your name and address to the reporter.

A. Lee R. Moss, Jr., Route 1, Rutledge, Georgia.

Q. What is your business? A. I operated a Texas service station at 204 North Main Street, Madison, Georgia.

Q. You don't operate it now? A. No, sir.

Q. What is your business now? A. I work for International Paper Company.

Q. No connection with the Texas Company? A. No, sir.

Q. This station which you operated on Main Street in Madison, Georgia, is that the same station as Mr. Sam Fielding operated? A. Yes, sir.

Q. What happened? Did you take over from him? A. No, sir. I sold to him.

(5662) Q. You were the dealer who sold to Mr. Fielding? A. Yes, sir.

Q. For how long were you a dealer at that location? A. Six years, sir, approximately.

Q. Did you have a lease on that station from the Texas Company? A. Yes, sir.

Q. Was it one of these leases which renewed itself each year? A. Yes, sir.

Q. There is some testimony in the record in this case that this particular station was one of three filling stations to which the Prior Tire Company sold TBA, and the testimony was that this station and two others were on private lease, whatever that means. I want to know, did you have a regular lease from the Texas Company that renewed itself each year? A. I had a regular lease that renewed itself each year from the Texas Company.

Lee R. Moss, Jr., for Respondents—Direct

Q. And neither you nor any relative or relation of yours leased that property to the Texas Company? A. No, sir.

Q. The record reference is to Mr. Avery's testimony on Pages 2090 and 2096.

You handled TBA at this station, did you? A. Yes, sir.

Q. You found it helped in your business? (5663) A. I handled it for the profit I got out of it for my business.

Q. That was your own choice? A. Yes, sir.

Q. During the time you were a dealer, did you have an understanding as to the TBA policy of the Texas Company? A. Yes, sir.

Q. Did you act on that understanding? A. Yes, sir.

Q. What was your understanding? A. My understanding was that they sponsored B. F. Goodrich and Firestone products, but it was my understanding that I could handle any product I wished to handle for a profit.

Q. And you did do so? A. Yes, sir.

Q. Will you tell us what sort of tires and batteries you handled while you were there? A. I handled Hood tires, sir, and I handled Bowers batteries, and also some National batteries which I picked up there in town.

Q. The Hood line and the Bowers line were your two principal lines? A. They were my principal line, yes.

Q. Did you also sometimes pick up a few items of Goodrich tires? (5664) A. I also had eight Goodrich tires that I kept in stock all of the time.

Q. And about how many Hood tires did you keep in stock? A. Twenty-one, sir.

Q. That was generally the number that you had? A. Yes, sir.

Q. And about how many Bowers and National batteries did you keep in stock? A. I kept a stock of six Bowers batteries, and I did keep three Goodrich dry-charge batteries in stock.

JA 1954

Lee R. Moss, Jr., for Respondents—Direct

Q. Let me ask you about that. Those Bowers were wet-charge? A. Yes, sir.

Q. Did Bowers have any dry-charge? A. Not at that time.

Q. Did the fact that Goodrich had dry-charge have anything to do with your stocking those three? A. Yes, sir. I wanted to stock the dry-charge batteries, the ones that I kept in stock.

Q. And that was your own choice? A. Yes, sir.

Q. It had nothing to do with wanting to please the Texas Company or because you were scared of the Texas Company? A. No, sir.

(5665) Q. How about your Goodrich tires? Will you tell us why you handled those? A. I handled it because of the people would come in and ask for, specifically ask for Goodrich tires.

Q. You found there was some demand for the Goodrich tire? A. Yes, sir.

Q. Was that the reason you handled those tires? A. Well, that was the reason I handled those; yes, sir.

Q. Was there any other reason you want to tell us about? A. No, sir.

Q. What about the accessories? From what source did you get those? A. I bought some from Auto Supply in Madison; and I bought some from Auto Supply Service truck that came around and called on me every two weeks from Elberton, Georgia.

Q. Did you buy most of your accessories from the Auto Supply Company? A. Yes, sir.

Q. What sort of fan belts did that include? A. I handled Gates' fan belts.

Q. Did you display those? A. Yes, sir.

Q. On a Gates' rack? A. Yes, sir.

Q. With the Gates' name? (5666) A. Yes, sir.

JA 1955

Lee R. Moss, Jr., for Respondents—Direct

Q. And the Gates' sleeve? A. Yes, sir.

Q. How about your Dunlop tires and Bowers and National batteries, did you display those? A. Yes, sir. It was Hood tires, sir.

Q. I am sorry.. Hood tires? A. Yes, sir.

Q. You did display those? A. Yes, sir; right on the rack.

Q. Openly? A. Yes, sir.

Q. Anybody could see them? A. Right on the rack with my Goodrich tires.

Q. Where were your batteries, National and Bowers?

A. On the shelf inside the station office.

Q. Right in the sales office? A. Yes, sir.

Q. Did you have any of those Hood tires displayed outside of your station? A. I had a rack with eight, with the Hood emblem on top of the rack, sitting—I kept it sitting right out in front of my station all the time, sir.

Q. Did anybody from the Texas Company ever tell you to stop handling the Hood and Bowers and National lines under (5667) / penalty of having your lease cancelled? A. No, sir.

Q. Did they ever tell you they would treat you badly in some other way if you didn't stop that? A. No, sir.

Q. When you took over that station, that is, when you first went in there as a lessee, did you start with the same line of TBA? A. No, sir.

Q. What did you have then? A. Well, I didn't have very much of anything, sir. I had one Gates' tire and I believe it was one Gates' battery.

I believe that is right. I just don't recall what brand it was.

Q. That is all that was there? A. That was all that was there in the tire and battery line.

Q. You took that over from the dealer who was there ahead of you? A. Yes, sir.

Lee R. Moss, Jr., for Respondents—Direct

Q. Then when you put in an order for TBA, what did you order? A. I ordered Hood tires, sir, and I ordered some Goodrich tires later on.

Q. You ordered the Hood tires first? (5668) A. Let me see. I believe I ordered the Goodrich first, sir.

Q. I just want to be sure you don't get the record wrong here. Mr. Dias will ask you. A. I did order the Goodrich tires first.

Q. Then you ordered the Hood tires? A. Yes, sir.

Q. Was that very soon afterwards? A. Well, I used my pick-up service until I got to where I could stock me some tires. That was about 7 months after I had opened the station for myself that I did order the Goodrich tires, and then within the next month I started handling Hood tires, too, sir.

Q. So during the first 7 months it was all on a pick-up basis? A. Yes, sir.

Q. And then, within a month of each other, you ordered the Goodrich and the Hoods? A. Yes, sir.

Q. That was your own choice? A. Yes, sir.

Q. It was a question of finances— A. Yes, sir.

Q. (continuing) —which determined that? A. Yes, sir.

Q. Who does your recapping for you? A. Snow Tire Company, Athens, Georgia.

(5669) Q. That is not a Firestone or Goodrich operation, is it? A. No. It is not a distributing point. They do handle some Goodrich tires there, sir.

Q. But it is not a supply point? A. No, sir.

Q. Do you have any dealers' meetings where you were located? Did you have any? A. I attended the spring meetings of the Texas Company at Avondale Estates one year.

Q. How many of those meetings did you attend? A. I attended—well, I attended eight of them, sir, but I run the

Lee R. Moss, Jr., for Respondents—Direct

station two years for a brother-in-law of mine before I bought it out.

Q. So you attended before you took the lease? A. Yes, sir.

Q. At those dealer meetings, did you ever hear anyone from the Texas Company suggest that any dealer would have his lease cancelled or be treated badly in some other way if he didn't handle some or all of the Goodrich or Firestone lines? A. No, sir.

(5670) Q. In the course of those meetings did you become acquainted with other dealers? A. Quite a number of them, sir.

Q. About how many other dealers do you think attended those meetings? A. There were around 150, sir.

Q. At any time did any of those dealers tell you that anyone from the Texas Company had threatened to cancel their lease or treat them badly in any other way if they didn't handle some or all of the Goodrich or Firestone line? A. No, sir.

Q. Did you display all of your TRA openly? A. Yes, sir.

Q. You made no effort to hide it? A. No, sir.

Q. And no one from the Texas Company ever suggested that you do hide it? A. No, sir.

Q. You caught the Gates' Mystery Man, did you? A. I caught him five times, sir.

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Q. Tell the Court who the Gates' Mystery Man is. A. He is just a fellow who rides around through the summer (5671) vacation months. Maybe it will be he and his wife. They will ride around. They have a map with their destinations marked out on it, and they will drive up in your station and maybe they will ask you to check their oil and water, maybe not even buy gas or anything from

Lee R. Moss, Jr., for Respondents—Direct

you, and they will have an old worn out fanbelt on it and it will just be flopping most of the time, and I happened to catch him each time he came in my station, and I do have at home the five plaques with five silver dollars to each plaque on them that I have caught him.

Mr. Dias: May I move to strike that? I don't see the relevancy of that story at all. It is very interesting, but I don't believe it is relevant.

Mr. Lorenzen: He is openly a Gates dealer, and the Gates man calls on him.

Mr. Dias: He testified to that. We know now that he had Gates belts in there. The fact that he won five dollars I don't think is very important.

Mr. Lorenzen: \$25.00.

Hearing Examiner Kolb: I will let the answer stand. Go ahead.

By Mr. Lorenzen:

Q. When you say you bought the station from your brother-in-law, that just means bought the business? A. Yes, sir.

Q. It had nothing to do with the underlying lease being from (5672) the Texas Company? A. No, sir.

Q. So, when you bought that business, did anyone from the Texas Company object to your taking over the small supply of Gates TBA that was in there? A. No, sir.

Q. The tire or the battery? A. No, sir.

Q. When you sold the station, did you sell to your succeeding dealer your Hood and Bowers line as well as all of the other TBA that was in there? A. Yes, sir.

Q. He bought your entire inventory? A. Yes, sir.

Q. Did the Texas Company make any objection to that? A. No, sir.

Mr. Lorenzen: I think that is all.

Lee R. Moss, Jr., for Respondents—Cross

Cross examination by Mr. Dias:

Q. Mr. Moss, when did you go into the station? When did you take a lease on it? A. 1950.

Q. Early in the year? A. In the fall, sir.

Q. I believe you stated that you had been working for your (5673) brother-in-law? A. Yes, sir.

Q. For how long a period? A. Two years. Approximately two years.

Q. Did you say that you ran the station for him? A. Yes, sir.

Q. Was he ill that he couldn't run it himself? A. No, sir; he was in another business.

Q. And at that time that he was in the station, was the property ever owned by the Ford people? A. Yes, sir.

Q. You started in the fall of 1950. When did you terminate? A. In '56, sir.

Q. You were there six years? A. Yes, sir.

Q. As a lessee? A. Yes, sir.

Q. Getting back to the Ford people, did they own the property? A. The Ford man, dealer, owned the building and all, and the Texas Company leased it from him.

Q. From Ford? A. And then he, in turn, leased it from the Texas Company.

Q. Where did your brother work? A. My brother-in-law, sir?

Q. Yes. (5674) A. He was in the pulp wood business.

Q. In what? A. Pulp wood business.

Q. Was he related in any way to the Ford man? A. No, sir.

Q. How long had your brother-in-law had that station? A. I believe about approximately two and a half years.

Q. Was it a new station when he moved in? A. No, sir.

Q. Can you give us some idea of how old it was? A. Sir, it was put up there while I was in the army, and I don't know exactly the year it was put up.

Lee R. Moss, Jr., for Respondents—Cross

Q. In your opinion, was that station in a good location? A. In a fine location, sir.

Q. Was it an up-to-date station? A. No, sir.

Q. Had the station ever been empty at any time? A. Not as I know of.

Q. And was business—you say business was good, or would you say it was good? A. Well, it was good for me, sir.

Q. How about for your brother-in-law? A. I was building it up for him all the time.

Q. Can you give me some idea of the gallonage in that station? A. When I started working for him it was pumping around (5675) 7,000 to 8,000 gallons per month.

Q. And when you took it over? A. It was pumping around 10,000 gallons per month.

Q. As I understand it, you sell no TBA to speak of? Very little? A. Just what I could pick up when I opened it up.

Q. During the years that you were there, how did the gallonage go? Up or— A. I picked it up. It was pumping from 10,000 to 15,000 gallons per month.

Q. Average throughout the year? A. Yes, sir.

Q. Do you know whether or not Texaco had difficulty getting operators to operate that station? A. No, sir.

Q. You don't know? A. No, sir.

Q. I am a little bit confused about when you started buying your various products after you got into the station. Just check me out on this. After you went in, in 1950, in the fall of 1950, and about seven months later you ordered a supply of Goodrich tires? A. Tires.

Q. And batteries? A. And batteries.

(5676) Q. And accessories? A. No, sir.

Q. No accessories? A. No, sir.

Q. Just tires and batteries? A. Just tires and batteries.

JA 1961

Lee R. Moss, Jr., for Respondents—Cross

Q. That would have been when? Sometime in 1951?
A. Yes, sir.

Q. When would you guess? About May or June? A.
I would say in May, sir.

Q. Do you recall the volume of Goodrich that you purchased at that time? A. I purchased eight tires and three batteries.

Q. Can you tell us where you purchased them? A. From Mr. H. C. Hicks, the gasoline consignee, from Covington, Georgia.

Q. He was your Texaco consignee, was he? A. Yes, sir.

Q. Then, did you discontinue purchasing Goodrich tires and batteries, or did you buy them from time to time over the years? A. I kept those in stock from year to year, sir.

Q. And did you have some Goodrich signs about the place, did you not? A. I had one Goodrich decal, over the little small window in front.

(5677) Q. And that was there all the time you were there? A. Yes, sir. It was put there before I had taken the station over.

Q. You mentioned having recapping done by Snow. Can you give us Snow's name and address? A. Snow Tire Company, Athens, Georgia.

Q. That is all? Athens, Georgia? A. It is a street, sir, but I just don't recall it.

Q. And you say that he handled Goodrich tires? A. He had some Goodrich tires.

Q. How about batteries? Did he handle Goodrich batteries, too? A. Not that I know of, sir.

Q. You got Goodrich batteries from your consignee?
A. That's right.

Q. At these dealer meetings, you attended while you were operating the station for your brother-in-law and also while you were running the station on your own, is that correct? A. Yes, sir.

JA 1962

Lee R. Moss, Jr., for Respondents—Cross

Q. (continuing) —did you at any time at those meetings see Goodrich or Firestone representatives at those meetings? A. Not as I know, sir.

Q. You were at eight meetings? How many did you attend? A. Approximately eight.

Q. Eight, over an eight-year period? (5678) A. Yes, sir.

Q. How many did they have per year? A. One per year, sir.

Q. And at none of those eight meetings you saw a Goodrich or Firestone representative? A. Goodrich and Firestone, they had displays in the room, but I didn't personally meet—

Q. (interposing) You personally weren't introduced to them? A. No, sir.

Q. But mere than likely they were there since they had the displays there? A. Could have been, sir.

Q. How well did you know all the dealers that you talked to there? A. I became personally—knew several of them, sir.

Q. Several? Out of the 150 there were several that you became personally acquainted with? A. Yes, sir.

Q. And how did the meetings operate? A. Well, they showed us how our oils and our gas and lubricants had been improved over the year, each year.

Q. Is that all? Did they discuss TBA at those meetings? A. They told us if they could be of any help to us in any way to call on them, on anything we wanted them to help us on, sir.

Q. Anything else that they discussed during the business part (5679) of the meeting? A. Not as I recall, sir.

Q. After the business meeting was over, then, you had a social gathering, did you? A. Well, we would gather out and talk together, us operators would, sir.

Lee R. Moss, Jr., for Respondents—Cross

Q. And at that time that is when you became acquainted with those dealers? A. Yes, sir.

Q. Did you know these dealers well enough that they would tell you all their problems? A. I don't imagine they would tell me exactly their home problems.

Q. And you think that they would tell you their business problems, do you? A. Yes, sir.

Q. Did any of them ever tell you that they were not having any trouble with Texaco? A. All of them told me they never had any trouble.

Q. They just met with you outside and said, "We are not having any trouble"? A. No, sir, not like that, no, sir.

Q. How would that come up then? A. We would be discussing things, together, about our stations, and how we could help each other with it, sir.

(5680) Q. In other words, it was more or less an exchange of ideas on how to sell products? A. That's right.

Q. You would have no occasion to discuss troubles with Texaco at that time, would you? A. No, sir, we did not.

Q. Can you give us some idea of the total volume of TBA that you carried in your station? Let's start in—when you took over there was only that one battery and one tire? A. Yes, sir.

Q. I take it for the next seven months that you just got them in as you could afford to stock them, more on a pick-up basis? A. Yes, sir.

Q. Thereafter, what was your normal stock of TBA? A. My normal stock, I would carry around 21 Hood tires, sir, and I would carry around eight Goodrich tires, and I would carry around six Bowers batteries, and I would carry about three Goodrich batteries.

Q. How about accessories, filters and that sort of thing? A. I carried a stock of Fram filters.

Lee R. Moss, Jr., for Respondents—Cross

Q. You mentioned Gates belts and hose. How about plugs? A. I hardly ever carried any plugs because I was there in the Ford Building and I could go back there and pick up my plugs at the same buying price that I could go across the street or (5681) anywhere else and buy, sir.

Q. The station was right in the Ford building? A. Right in the building with the Ford place.

Q. That was located in Madison, Georgia, was it? A. Yes, sir.

Q. Is Madison a suburb of Atlanta? A. No, sir.

Q. Did you ever operate a station in Panama City, Florida? A. No, sir.

Q. How far is Madison from Atlanta? A. Sixty-two miles, sir.

Q. Did you have the credit card system available to you there? A. Yes, sir.

Q. And did you charge those non-sponsored products on the credit card? A. Yes, sir.

Q. And you, on your credit slips, noted that they were Hood tires and other non-sponsored products, did you? A. I just put, if I sold one tire, I put "one tire".

Q. You didn't specify the brand name? A. No, sir.

Q. Why didn't you do that? A. Well, because—I did it my own self because I didn't figure it was anybody's business what kind of tires I sold, sir.

Q. Especially Texaco's? (5682) A. Nobody's business.

Q. Aren't those credit cards, or weren't they at that time, limited to Firestone and Goodrich tires? A. Didn't—

Mr. Lorenzen (interposing): Wait a minute. What time are you talking about.

Mr. Días: He was there from 1956.

Mr. Lorenzen: He was there to 1956. During most of that time there wasn't even a suggestion of what you call a limitation on the back of the card.

Lee R. Moss, Jr., for Respondents—Cross

(5683) *By Mr. Dias:*

Q. When in 1956 did you leave? A. Well, I left actually it was the middle of '56.

Q. Did you operate any differently from January 1, 1956, to the middle of 1956? A. No, sir.

Q. And you continued to charge tires, just as tires? You didn't specify? A. I don't recall selling but one set of tires on the credit card, sir.

Q. How about— A. In '56.

Q. How about other accessories, batteries? Did you sell those on credit cards? A. I sold them on credit cards.

Q. And in those instances, and including the one set of tires, were they Goodrich or other tires? A. They were Firestone, sir.

Q. They were Firestone? A. Yes, sir.

Q. When did you start taking on the Firestone line? A. I did not take it on. This customer of mine specified that he wanted a set of Firestone tires on his car, and I went and picked those up.

Q. How many other times during the course of your lease did (5684) you buy Firestone tires? Do you recall? A. No, sir; I don't.

Q. Did you sell Goodrich tires on a pick-up basis also? A. No, sir.

Q. You did not? A. No, sir.

Q. In other words, if you didn't have it in stock you didn't sell the tire? A. I couldn't get it, sir, in time to sell it.

Q. What about your consignee? How far away was he located? A. Twenty-seven miles, I believe.

Q. How far away was Snow? A. Twenty-eight miles.

Q. How often did the salesmen come around to see you there? A. I would say he came around approximately every three months.

Q. Texaco salesman? A. Yes, sir.

Lee R. Moss, Jr., for Respondents—Redirect

Q. Did the consignee himself ever come down to see you? A. Yes, sir.

Q. That was the salesman you are talking about? A. That was the Texas salesman, who called on me approximately every three months.

Q. What was the population of Madison, do you recall? A. About 3,500 I imagine, sir.

(5685) Q. Were there other Texaco stations in town? A. No, sir.

Q. You were the only one? A. Yes, sir.

Mr. Dias: Thank you. I have nothing else.

Redirect examination by Mr. Lorenzen:

Q. To get this cleared up, the consignee calls on you in addition to the— A. In addition to the Texas salesman; yes, sir.

Q. And did the Texas District Zone Manager ever call on you, too? A. Yes, sir.

Q. For how long a time was this stock that Mr. Dias talked to you about, of 21 Hood tires and 8 Goodrich tires, for how long a time was that your normal stock? A. Around five years.

Q. Right from the time you placed your first orders as you testified for those two tires? A. Yes, sir.

Q. Did they ever happen to show you any of these TBA sales assistance movies at these dealer meetings that you had? A. Yes, sir.

Q. That was another thing that happened at those meetings? (5686) A. Yes, sir; it was.

Q. Did you find those movies to be helpful to you in selling TBA? A. Yes, sir.

Mr. Lorenzen: That is all.

Lee R. Moss, Jr., for Respondents—Recross

Recross examination by Mr. Dias:

Q. I thought you understood my question when you insisted that the consignee called on you only once every three months. I did specify the Texaco salesman. I would like to clarify that. Who was your Texaco salesman? A. Mr. T. O. Andrews.

Q. He is with the Texaco Company; he is not with this consignee? A. No, sir.

Q. The consignee you saw once every three months? A. No, sir. The Texaco salesman, Mr. Andrews.

Q. He is the man that you saw once every three months? A. Yes, sir.

Q. Did the Texas consignee ever come to your station? A. Yes, sir.

Q. How often did he come? A. Well, I would say he would come down maybe twice a month, sir.

Q. The Zone Manager or any other Texaco personnel, were they (5687) in there regularly in your station? A. I believe I have got Mr. T. O. Andrews—he is the Zone Manager.

Q. We won't quibble. What I am mainly interested in—I won't quibble with you as to whether Andrews is the Zone Manager or salesman.

The only thing I want to clarify is who from the Texas Company either directly or connected with the consignee came to see you, and when and how often. A. Mr. T. O. Andrews.

Q. And you don't know whether he was a salesman or a Zone Manager or some other official; is that it? A. I believe he was the Zoning Manager.

Q. He was the Zone Manager. And he is the man who came in every three months? A. Yes.

Q. Was there another person, a Texaco salesman, who came to see you from the Texaco Company? A. No, sir.

JA 1968

Lee R. Moss, Jr., for Respondents—Recross

Q: There was not? A. No, sir.

Q. Other than that, the only other person² connected with Texaco was this consignee? A. Yes, sir.

Q. Who came down about twice a month? (5698) A. Yes, sir.

. . .

By Mr. Dias:

Q. Tell us why he called on you? A. He drove his own delivery truck sometimes, and had to call on me that way with the gas.

Q. So, in other words, he came down to deliver gasoline? A. Yes, sir.

Q. And at that time did he have any other conversation with you? A. He asked me; was there anything that he could help me with any way, most every time he came down.

Q. Every time he would come down he would ask you that? A. Yes, sir.

Q. And that was twice a month you got deliveries of gas? A. That was when he came down, approximately how much he came down.

(5689) Q. Are you sure those are the only folks that ever came down and talked to you? A. Yes, sir.

Q. And that is about the extent of the consignee's discussion with you? A. Yes, sir.

Q. Did you say that he did or did not carry Goodrich tires and batteries? A. He does carry Goodrich batteries and tires. You mean the consignee?

Q. Yes. A. Yes, sir.

Q. When he came down to see you he didn't try to sell you any Goodrich tires or batteries? A. No, sir.

. . .

O'Neal Embry, for Respondents—Direct

(5690) O'NEAL EMBRY was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Please state your full name and home address to the reporter. A. O'Neal Embry, 3255 Embry Circle, Chamblee, Georgia.

Q. Will you tell us what your present business is? A. Building contractor.

Q. Do you build anything for the Texas Company? A. No, sir.

Q. At one time were you in the service station business? A. Yes, I was.

Q. At what location? A. 3500 Memorial Drive, Southeast, Decatur, Georgia.

Q. For how long were you in the business in that station? A. Approximately two years.

Q. Were you in there as a lessee for two years? A. No, that is not right.

Q. Tell us just what is right. A. I was in there as a contract dealer.

Q. For what time? A. From '54 until '55.

(5691) Q. And then— A. I was a lessee.

Q. So you owned the property, or you leased it from some one else from 1954 to 1955? A. That is right.

Q. And you had a supply contract with the Texas Company? A. That is correct.

Q. We have you now to 1955. What month? A. October.

Q. Up to that time you owned the property and had a supply contract with the Texas Company? A. No, I did not own the property.

JA 1970

O'Neal Embry, for Respondents—Direct

Q. You leased it? A. I leased it.

Q. From whom? (5692) A. My brother.

Q. You leased it from your brother? A. That is right.

Q. Then you had a supply contract with the Texas Company? A. That is correct.

Q. In October 1955 what happened? A. My brother sold the property to the Texas Company and I, in turn, leased the station from the Texas Company.

Q. At that time you were in on one of these standard leases that renews itself from year to year; is that right?

A. Yes.

Q. About what is the gallonage—what was the gallonage of this station while you operated it? A. Approximately 30,000 gallons per month.

Mr. Dias: I missed that.

The Witness: 30,000 gallons a month.

By Mr. Lorenzen:

Q. Decatur is near Atlanta, is it? A. That is correct.

Q. Sort of part of it? A. It is metropolitan Atlanta.

Q. Metropolitan Atlanta? A. That is right.

Q. Did you handle TBA at this station? A. Yes.

(5693) Q. Will you tell us why you handled it? A. For money-making operation.

Q. And it did make money for you? A. Yes, it did.

Q. That was your own choice to handle TBA? A. Yes, it was.

Q. You handled it at the time when you were a contract dealer, did you? A. That is right.

Q. And you handled it also when you were a lease dealer? A. That is correct.

Q. Will you tell us what kind of TBA, what brand of TBA, you handled in the way of tires and batteries? A.

O'Neal Embry, for Respondents—Direct

Goodrich and Southern batteries. I handled some Good-year tires and some US Royal tires. Also sold some Fire-stone.

Q. Did you handle the same type of brands both during the time you were a contract dealer and the time you were a lessee dealer? A. Yes.

Q. You had the same sort of buying patterns? A. Yes, sir.

Q. Before and after? A. That is correct.

Q. Tell me what the time relationship is between your signing up with the Goodrich Company to handle some Goodrich (5694) products and your selecting the Texas Company as your supplier under the supply contract? A. In '54 I was working for the Georgia Power Company and Mr. Miller contacted me at Gainesville, Georgia, in reference to running a station. He was with the Goodrich Company. He approached me on the subject of using Goodrich products, which I told him I would let him know, and I went into the area where I was planning on leasing a station and I looked around and I found that Goodrich Stores were not in the area and the stations were not handling Goodrich products, and I decided to use B. F. Goodrich products.

Q. Was that before or after you had decided what kind of gasoline you were going to sell at the station? A. I had never met anybody from the Texas Company, at that time.

Q. So that you made your supply contract with the Texas Company after you had made your deal with Goodrich? A. I beg your pardon?

Q. Or after you had made your commitment with Goodrich? Is that what you said? A. I signed with Goodrich before I ever built the station.

Q. You signed with Goodrich before you ever built the station? A. That is correct.

JA 1972

O'Neal Embry, for Respondents—Direct

Q. At what time did you decide to take a supply contract (5695) with the Texas Company to handle the Texas gasoline? Was that afterwards? A. It was afterwards. I don't remember just when it was.

Q. But you remember definitely it was after you had signed the deal with Goodrich? A. That is correct.

Q. Then you selected Texaco and you did handle Texaco in that station on a supply contract basis? Is that correct?

A. Well, I didn't select Texaco. My brother, he selected Texaco, and I in turn leased the station from him.

Q. Then when he sold the station you took your lease from the Texas Company? A. That is right.

Q. At that time did the Texas Company tell you they wouldn't give you a lease unless you got rid of the Southern batteries and the tires other than Goodrich which you were handling at the time? A. No.

Q. Was anything like that said to you at all? A. No, there wasn't.

Q. Since you went in that station, was there ever any threat made to you that your lease would be cancelled or you would be treated badly in some other way— A. No, sir.

Q. —unless you stopped handling these Southern batteries (5696) and these other tires? A. No, sir.

Q. What kind of fan belts do you handle? A. B. F. Goodrich.

Q. And you also bought some of your other accessory line from the B. F. Goodrich Company, did you? A. That is right.

Q. Did you do any business with the Gordy Tire Company? A. Yes, I did.

Q. You bought what? What kind of tires? A. Mostly farm implement tires, heavy truck tires.

JA 1973

O'Neal Embry, for Respondents—Direct

Q. Do you mean by that tractor tires, that sort of tires?

A. Tractors, tractor wagons.

Q. How about Reddick Sales Service, what did you buy from them? A. Special size truck tires that I couldn't find at other places.

Q. And from whom did you buy such US tires as you purchased? A. The US Royal distributor on Houston Street.

Q. You had some of your recapping done by Goodrich, did you? A. Had some of it.

Q. Where was the rest of it done? A. Stovall Tire Company, Decatur, Georgia.

Q. How about your seat covers, from what source did you buy those? (5697) A. I bought them from Keystone, I believe, in Atlanta.

Q. That is not a Firestone or Goodrich distributor? A. No, it is not.

Q. Did you buy anything from Alexander Seewall? A. Yes.

Q. He was not a Firestone or Goodrich distributor? A. No, he wasn't.

Q. What did you buy from him? A. I bought Prestone and I bought thermostats. That was most of the stuff that I bought from him.

Q. From whom did you buy your cleaners? A. Globe Chemical Company.

Q. And from whom did you buy your Southern batteries? A. Southern battery Company.

Q. When you retired from the service station business and went into this building business did you sell your successor your whole inventory? A. Yes.

Q. Whatever was in it? A. Yes.

Q. Whether it was in the Firestone or Goodrich line or not? A. That is right.

O'Neal Embry, for Respondents—Cross

Q. Did the Texas Company make any objection to that?
A. None.

Q. During the time you were operating this station did you (5698) ever attend any dealer meetings? A. I attended one dealer meeting.

Q. During that meeting did you hear any threat being made to any Texas dealer that his lease would be cancelled or he would be treated badly in any other way if he didn't handle some or all of the Firestone or Goodrich line? A. No, I didn't.

* * *

Cross-examination by Mr. Dias:

Q. You attended one meeting and heard no threat? A. That is correct.

* * *

(5700) *By Mr. Dias:*

Q. Who succeeded you at that station, Mr. Embry? A. John Tate.

Q. And did you sell it to him or did you lease the station? A. I sold it to him.

Q. Do you know who Richard Smathers is? A. Yes, I do.

Q. Can you tell us something about him; who was he?
A. He was the dealer that bought the station from Mr. Tate.

Q. You mean he was after Mr. Tate in your station?
A. That is correct.

Q. He wasn't there before you at the station that you ran? A. No.

Q. Do I understand that the station was brand new when you took it over? A. Yes.

O'Neal Embry, for Respondents—Cross

Q. You folks built it and you moved in; is that correct?

A. That is correct.

Q. Can you tell me when you went into that station? It was in 1954 sometime, wasn't it? A. It was in June of 1954.

Q. And you took over the station? A. Yes, sir.

Q. You opened it up. When you opened it up, did you have TBA on hand? (5701) A. Yes.

Q. What TBA did you have on hand? Tires, first. A. At the time I opened the station, I only had Goodrich.

Q. And batteries? A. B. F. Goodrich.

Q. And accessories? A. B. F. Goodrich.

Q. Where did you buy those? A. From B. F. Goodrich store, Courtland Street.

Q. How long did you continue to carry that line? The full line, I mean. A. I carried a full line all the time.

Q. Did you say that this gentleman who talked to you while you were at the Georgia Power Company is a friend of yours? A. No, sir, I had never met him.

Q. You had never met him? A. No, sir.

Q. That is Mr. Miller? A. Miller.

Q. How do you suppose he just walked up to you and asked you if you would like to carry Goodrich tires in a station that you didn't know about?

Mr. Lorenzen: I object to that question. The witness couldn't possibly answer that.

Mr. Dias: I didn't think so either.

(5702) Mr. Lorenzen: I think it ought to be withdrawn.

Mr. Dias: I disagree. We will wait for a ruling.
Hearing Examiner Kolb: Objection overruled.

O'Neal Embry, for Respondents—Cross

By Mr. Dias:

Q. You can answer. A. I can tell you how he walked up to me.

Q. That is what I asked you. A. He knocked on my door.

Q. At home? A. At home.

Q. Was he just soliciting everybody, do you know? A. He didn't tell me how he got my name, and I really wasn't interested in it at the time because it was going to be a future date before I opened the station.

Q. At the time you knew you were going to open a station, did you? A. I knew I was going to open a station.

Q. And can you tell us when it was that he first called on you? A. No, I can't.

Q. You moved into the station in June of 1954. Does that help you fix the time that Mr. Miller walked in on you and asked you if you wanted to carry Goodrich? A. I believe it was the latter part of '53 or '54.

Q. Early '54 or latter part of '53? (5703) A. I believe that is correct.

Q. Was the station under construction at the time? A. The lot had been graded.

Q. Had been graded, but there had been no ground breaking or anything else? A. Well, I would call grading the lot ground breaking.

Q. Could you tell from what was accomplished on the lot that that was going to be a service station? A. The first time I seen it, I could not tell there was going to be anything on the lot.

Q. And that is the time he called on you, this Miller from Goodrich? A. That's right.

Q. You were in the station as a contract operator or from 1954—June 1954 until October 1955; is that correct?

A. That is correct.

O'Neal Embry, for Respondents—Cross

Q. Then, was it sometime in October 1955 that you took over as a lessee? A. Yes, sir.

Q. When did you leave the station, then? A. August 1, 1956.

Q. I think you stated that during all that time you carried the full line of Goodrich TBA, is that correct? A. That's right.

Q. Did you carry some Firestone also? (5704) A. I only carried Firestone tires. When a customer asked for them I would pick them up at Spring and Baker Street store.

Q. At the Firestone store? A. Yes, sir.

Q. Did you buy anything else from Firestone? A. No.

Q. Was that Southern battery that you carried, was that your price line? They were cheaper batteries, were they? A. Yes.

Q. And you carried that for convenience purposes, because it was a cheaper line? A. It was more competitive.

Q. Was your primary line a Goodrich battery? A. Yes, it was.

Q. Did you ever have any Firestone batteries in there? A. No.

Q. These farm implement tires that you bought from Gordey, did Goodrich carry farm implement tires? A. Yes, they did.

Q. Did Firestone carry them, too? A. Yes, they did.

Q. How about the special size truck tires that you couldn't find elsewhere? A. Occasionally, you would have a call for somebody would tear up a tire and wanted recap. The carcass of special size (5705) truck tires is very hard to get. We had to locate them wherever we could.

Q. That is when you dealt with Reddick? A. That is correct.

Q. On these implement tires that you bought from Gordey, did Gordey sell any other type of tire? A. Yes.

O'Neal Embry, for Respondents—Redirect

Q. What type? A. Dayton Thoroughbred and Gillette.

Q. Did you ever buy any of those from Gordey? A. No, I didn't.

Q. When did you buy U. S. Royal tires? A. I bought tires numerous times. I don't remember.

Q. Was that on a pick-up basis as customers asked for them? A. No, they were on special occasions when they would be overstocked with special size tires and would give an extra five or ten percent off I would buy a few sets of tires.

Q. What year was that? During 1956? A. It was both years.

Q. '55 and '56? A. Yes.

Q. What did your inventory consist of when you sold out to your successor? You had Goodrich tires there, did you? A. I did.

Q. And Goodrich batteries? (5706) A. That is correct?

Q. And Goodrich accessories? A. Yes, sir.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. The U. S. tires Mr. Dias asked you about, you stocked those in your station when you got these special deals? A. That's right.

Q. Along with your other stock? A. Yes, sir.

Q. There is one other question—I didn't know whether you testified differently on cross-examination from what was on direct—and that is the Southern batteries. Did you stock those both before October 1955 and afterwards, or just afterwards? A. Before and afterwards.

Q. Before and after? There was some question that Mr. Dias asked you about buying only Goodrich. The fact is that you bought them both before and after? A. That's correct.

P. K. Conner, for Respondents—Direct

Q. And stocked them openly, both before and after?

A. That's correct.

Q. So, there was no difference at all in either your buying or your stocking habits before and after you became a lessee? (5707) A. That's right.

Q. Mr. Dias also asked you about the Goodrich batteries being your primary line, and the Southern batteries being the secondary line. Was the fact that the Goodrich batteries were the dry charge and the Southern the wet? A. That is primarily the reason.

. . .

(5708) P. K. CONNER was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Please state your full name and address to the reporter. A. P. K. Conner, 130 Fort Street, Monroe, Georgia.

Q. You stuck to the service station business, have you? A. Yes, sir.

Q. Are you still in it? A. (No response.)

Q. Where is your service station located? A. 219 East Spring Street, Monroe, Georgia.

Q. Do you sell Texaco gasoline? A. Yes, sir.

Q. Do you have a lease from the Texas Company? A. Yes, sir.

Q. And is that one of these leases that renews itself each year? A. That is correct.

Q. What has been the gallonage of your station? A. Ten to twelve thousand gallons a month.

Q. For how long have you been in that location? (5709) A. Since December, 1949.

P. K. Conner, for Respondents—Direct

Q. You have been a lessee dealer all that time? A. That is correct.

Q. Have you handled TBA in that station? A. Yes, sir.

Q. What have been your reasons for handling that? A. Trying to make a little extra money on my operation.

Q. You find it does that for you? A. Yes, it helps.

Q. What sort of tires do you stock? A. Dayton.

Q. About how many do you have in stock? A. Around 20.

Q. And do you have any others in stock? A. Two or three Pennsylvania.

Q. Any Firestone or any Goodrich? A. No, sir.

Q. What kind of batteries do you stock? A. Excello and Delco.

Q. Do you have any Firestone or any Goodrich? A. No, sir.

Q. For how long a time has that been your buying pattern? A. Since I have been where I am.

Q. Do you mean from the very beginning? A. Yes, sir.

(5710) Q. You have always handled Dayton and Pennsylvania? A. Yes, sir.

Q. By the way, from whom do you buy the Dayton tires? A. Gordy Tire Company of Atlanta.

Q. Gordy Tire Company of Atlanta? A. Yes, sir.

Q. Where do you get your Pennsylvania tires? A. Jack Baggett's Auto Parts and Recap Shop, Lawrenceville, Georgia.

Mr. Dias: What do you get from him?

The Witness: Get Pennsylvania tires from him. He also does some recapping for me.

P. K. Conner, for Respondents—Direct

By Mr. Lorenzen:

Q. He also does recapping for you? A. Yes, sir; that's right.

Q. Do you have all your recapping done there? A. No, sir. Gordy does some of my recapping for me, in addition to selling the Dayton tires that I take from him. I take Dayton tires and get recapping done from Gordy.

Q. From whom do you get Delco and Excello batteries? A. I buy Excello from a man by the name of Raft Miller who works out of Atlanta. I buy the Delco from Monroe Auto Supply Company, locally.

Q. Are most of your customers local people around Monroe, Georgia, whom you know? (5711) A. Most of the TBA customers are; yes, sir.

Q. Do they take your word and your recommendation for the tires that you sell? A. Yes, sir.

Q. While we are on this Gordy Tire Company and tires, let me ask you: Do you do any advertising, radio advertising of your tires? A. I have three radio programs a week.

Q. Are those sponsored? A. They hit me with the expense of the advertising.

Q. Gordy does? A. Yes, sir.

Q. And you feature the Gordy tires in that advertising? A. Yes, sir.

Q. From whom do you buy your accessory items? A. I buy some from Monroe Auto Supply.

Q. That is not a Firestone or Goodrich supply point, is it? A. No, sir. Some from Hughe Tyner, Danielsville, Georgia; and some from some of the wagon jobbers who call by my place.

Q. Are those the principal sources? A. Those are the primary sources of supply.

Q. For your accessories? A. Yes, sir.

P. K. Conner, for Respondents—Direct

Q. So you buy very little Goodrich or Firestone? A. That's right.

(5712) Q. Has this method of buying been in accordance with your understanding of the Texas Company's TBA policy? A. Yes, sir.

Q. You understood you could buy anything you wanted? A. Yes, sir.

Q. And you have done so? A. Yes, sir.

Q. Tell me, have you known the Texas Company recommends any particular line? A. I knew they recommended Goodrich and Firestone.

Q. And you have known that all along? A. Yes, sir.

Q. Has any one from the Texas Company ever told you that your lease might be cancelled or that you would be treated badly in any other way if you didn't stop buying this TBA which is not in the Firestone and Goodrich line? A. No, sir.

Q. No such threat or suggestion has ever been made to you? A. No, sir.

Q. Has any one from the Texas Company ever told you to hide or not display your tires and batteries? A. No, sir.

Q. Do you display them? A. Yes, sir.

Q. Openly and publicly? (5713) A. Yes, sir. That is a good means of selling.

Q. And also your batteries, do you display those? A. Yes, sir.

Q. Openly and publicly? A. Yes, sir.

Q. And the name appears in the display? A. Yes, sir.

Q. Do you keep your Dayton tires out front? A. Yes, sir.

Q. With the Dayton name appearing on them? A. Yes, sir.

Q. Has the Texas Company been of any help to you in marketing your TBA items? A. Well, they send me a little monthly bulletin that gives suggested items on selling. We

P. K. Conner, for Respondents—Direct

also have a spring dealer conference at which time they give items on effective marketing for the parts that we handle.

Q. Do you find that you can apply those to the type of TBA you handle? A. I find them helpful.

(5714) Q. Where are those dealer meetings held? A. Avondale Estates is where all except one was held, which was held at Athens, Georgia, which is nearer my home town than Avondale Estates was.

Q. About how many dealer meetings have you attended, would you say? A. I suppose I have attended one annually, since 1949.

Q. And about how many dealers are at those meetings? A. I would say 150, roughly.

Q. At any time at those meetings has anyone from the Texas Company suggested that any dealers or dealers' leases in general might be cancelled if they didn't buy some or all of the Firestone or Goodrich line? A. No, sir.

Q. Have you had a chance to talk to some of the dealers at the meetings? A. Well, we have never talked too much because they would have these meetings at the end of the day, and our work is long and hard, and by the time we would go in and eat and then enjoy the film it would be time to go home, so there wasn't much passing of words after you got outside. So for that reason we didn't talk about problems but very little.

Q. You said, when you eat. Did you eat together with the dealers? A. We would eat together with the dealers, and then have the (5715) film following the meeting. Then they would have a custom of giving buttons or lapel pins for the men who had been with them for a number of years. Of course, they had ceremonies attending that. By the time we got through it would be time to start home to get rest for another day.

P. K. Conner, for Respondents—Cross

Q. In the course of that, since 1949, whether at the dealer meetings or otherwise, has any Texas dealer ever told you that the suggestion had been made to him that his lease might be cancelled or he would be treated badly in some other way if he didn't handle the Firestone or Goodrich line, or some of it? A. I have never heard it discussed in any way by anyone.

Cross-examination by Mr. Dias:

Q. Is Monroe a suburb of Atlanta? A. No, sir, it is 45 miles east of Atlanta.

Q. You don't own this property? A. No, sir, I just lease it.

Q. Or no relative or friend owns it? A. A friend owns it.

Q. Who is the friend? A. Mr. J. T. Sigman, the Chevrolet man there.

Q. Is he a close friend of yours? A. No, sir, I just have a passing acquaintance with him.

Q. How long have you known him? (5716) A. I have known Mr. Sigman fifteen years.

Q. Don't you have income from other sources? A. No, sir.

Q. You do not? A. No, sir.

Q. You don't have the donut shop any more? A. No, sir.

Q. Monuments? A. No, sir.

Q. When did you get rid of those? A. I don't remember. I just kept them a short time.

Q. Did you say that you purchased new tires from Gordy? A. Yes, sir.

Q. You purchased a lot of recaps, too, didn't you? A. Yes, sir.

P. K. Conner, for Respondents—Cross

Q. And you never purchased any Goodrich or Firestone tires at all? A. I have taken a few from Mr. Hicks, at Goodrich, when I had an order from them, if he was coming my way to where I could get the customer to wait. My supply point is 25 miles from where I am. If the man is in a hurry, he couldn't wait.

Q. Which supply point is 25 miles? A. Where my gasoline comes from.

Q. Does he also sell TBA? A. He also sells the Goodrich line.

(5717) Q. Twenty-five miles away? A. Yes, sir.

Q. Is there a Firestone store nearby? A. There is a Firestone store in the town.

Q. Where are they located? A. On Broad Street.

Q. Very close to your place? A. Three or four blocks from where I am located.

Q. Are there any other retail outlets in town that sell Goodrich or Firestone products? A. Not to my knowledge.

Q. By "retail outlets," I mean stores or stations. A. Not to my knowledge.

Q. Did you operate the same station in 1947, too? A. No, sir. I operated a Standard station in 1947.

Q. That was a Standard station? A. Yes, sir.

Q. You didn't carry Goodrich or Firestone there, did you? A. No, sir. I handled Atlas there.

Q. Have you received any complaints whatsoever from the Texas Company in connection with your business recently? A. No, sir.

Q. Or from Mr. Hicks, your consignee? A. No, sir.

Q. Are there any other Texaco stations in town? (5718)
A. One other.

Q. Where is he located? A. He is located on the opposite end of town from me, on the same highway.

Q. Do you know him very well? A. Not too well. I know his name.

P. K. Conner, for Respondents—Redirect

C. T. Fitts, for Respondents—Direct

Q. What is his name? A. R. L. Jones.

Q. Have you been in or near his station? Do you know his station at all? A. I know where the station is located, yes.

Q. What does he carry? A. He runs a recap shop and sells a few new tires.

Q. What brand? A. Goodrich.

Q. Do you know what kind of batteries he carries? A. I am not sure. I think I saw some Excellos in his shop the other day.

Mr. Diás: That is all.

Redirect examination by Mr. Lorenzen:

Q. The lease which you have is definitely with the Texas Company? A. Yes, sir, that is right.

Q. You have no leasing arrangement at all with this (5719) Chevrolet fellow? A. No, sir.

Mr. Lorenzen: That is all.

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(5720) C. T. FITTS was called as a witness for the Respondent and, having been previously duly sworn, testified as follows:

Direct examination:

Mr. Lorenzen: Mr. Fitts was called as a witness for the Government in Atlanta. He has been on the stand before.

C. T. Fitts, for Respondents—Direct

By Mr. Lorenzen:

Q. Will you state your full name? A. C. T. Fitts, 5656 Pine Branch Road, Columbia, South Carolina.

Q. Mr. Fitts, you testified before when Mr. Dias called you in Atlanta? A. Yes, I did.

Q. At that time you were zone manager? A. Zone manager, yes.

Q. In Atlanta? A. Yes.

Q. You no longer hold that position? (5721) A. No.

Q. You are district manager, are you? A. I am district manager, yes.

Q. At Columbia? A. Yes.

Q. South Carolina? A. Yes.

Q. For how long were you zone manager in Atlanta?

A. From January 1, 1952, through June 30, 1957.

Q. And for how long before that time were you employed by the Texas Company? A. I have been an employee of the Texas Company for twenty years.

Q. Will you look at Respondent's Exhibits 30, 31, and 32 and tell me whether, during the time you were zone manager in Atlanta, you were acquainted with the policies of the Texas Company set out in those exhibits? A. Yes, I did receive these and I am very familiar with them.

Q. What was your understanding as to the Texas Company's TBA policy during the time you were zone manager in Atlanta? A. We have two sponsored lines of TBA—Goodrich and Firestone. However, we respect the rights of the dealer as an independent businessman, and he is free to purchase any TBA that he sees fit.

Q. Was that your understanding even before the date of that (5722) first letter, which was 1952? A. Yes, sir.

Q. That is, that letter did not create any change in policy? A. It did not.

C. T. Fitts, for Respondents—Direct

Q. Was it among your duties to transmit that policy of the Texas Company, among others, to the salesmen and others who operated under you? A. Yes, it was.

Q. Did you do so? A. I did.

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(5723) Q. What, if anything, was included among your duties with respect to transmitting to the dealers the TBA policy of the Texas Company? A. It was my duty as zone manager to go over our policy letters thoroughly with the salesmen and discuss it with them and explain anything that they did not understand.

Q. What, if anything, was there among your duties with respect to transmitting the Texas Company's TBA policy to the dealers whom you installed? A. We always advised the dealers of our policy on TBA.

Q. Did you consider that as part of your duties? A. Yes, I did.

Q. Do you recall any occasion while you were zone manager when you departed from your understanding of the Texas Company's TBA policy in connection with the installation of any dealer? A. No.

Q. Did you have anything to do with the installation of Ben D. Watkins, a Texaco dealer at Roswell Road, Atlanta? A. Yes, sir.

Q. I ask you specifically whether in that case you departed in any respect from the Texas Company's TBA policy in your (5724) talk with that dealer? A. No.

Q. Did you tell that dealer that he was not supposed to carry any tire except either Firestone or Goodrich? A. No.

(5725) Q. I was quoting testimony appearing at page 2108 of the record.

Do you have any knowledge of the connection which Mr. Watkins had with the Firestone distributor or Com-

C. T. Fitts, for Respondents—Direct

pany? A. Yes. He was a former dealer of Firestone's in Columbus, Georgia, and during the time that he was a Firestone dealer he became very friendly with some of the Firestone salaried personnel.

Mr. Dias: I object to the answer, your Honor. It is obviously a conclusion.

Hearing Examiner Kolb: Overruled.

By Mr. Lorenzen:

Q. Did you get that information from him? A. Yes.

Q. Did you have anything to do with the installation of Mr. Berry, of the Berry Service Station, Piedmont Avenue? A. Yes, I did.

Q. In connection with his installation, and your talks with him, did you depart in any way from the policy of the Texas Company with respect to TBA as you understood it? A. No, sir.

Q. Quoting from page 2109 of the record, did you ever tell him that, "it would not please the oil company"—and I am ending the quote there—if he handled some tires sold by a salesman of the G. T. Duke Company? A. No.

Q. Could you tell us something about Mr. Berry's financial (5726) condition and his ability to carry a full line of TBA? A. His financial position wouldn't permit him to carry a full line or a full stock of TBA.

Q. Did you ever tell Mr. Berry, or did you ever instruct any of your salesmen to tell Mr. Berry—and I am referring now to page 2111 of the record—that the Texas Company was very hard to get along with unless he carried tires of Firestone or Goodrich? A. No, sir.

Q. And did you ever tell him that it would make the Texas Company awfully unhappy, such as getting small repairs done and things of that nature about the station, if he didn't carry Firestone or Goodrich? A. No, sir.

C. T. Fitts, for Respondents—Direct

Q. Did you ever refuse to make any repairs on the Berry station or get small things done for him because of the TBA purchases or the types of purchases that he made? A. No, sir.

Q. General Royall calls my attention to the fact that I may have unconsciously indicated that the testimony to which I had reference was testimony by the dealers. Of course, it wasn't. It is hearsay testimony by a salesman for one of the companies to which I had reference.

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(5727) Q. Did you have anything to do with the installation of Earl M. Gause—is it G-a-u-s-e? A. Gause—G-a-u-s-e. Yes, I did.

Q. In connection with that installation and your conversation with him did you depart in any way from the policy of the Texas Company with respect to TBA as you understood it? A. No, sir.

Q. Did you ever tell him that he could handle no other brand than Firestone or Goodrich? A. No, sir.

Q. Did you have anything to do with the installation of Mr. Herman Gilbert— A. Yes, sir.

Q. (continping)—at 1686, Jonesborough Road? A. Yes, I did.

Q. In the course of that installation in your conversations with Mr. Gilbert, did you ever depart from the policy of the Texas Company with respect to TBA as you understood it? A. No, sir.

Q. And referring to the testimony at page 2022, did you ever tell Mr. Gilbert, "Well, they didn't tell us that they would expect us to handle Firestone or B. F. Goodrich"? Did you tell him that? A. No, sir.

(5728) Q. Did you have anything to do with the installation of Mr. H. Arpin—A-r-p-i-n—Koehler—K-o-e-h-l-e-r, as a dealer? A. Yes.

C. T. Fitts, for Respondents—Direct

Q. In connection with his installation in your conversations with him, did you ever depart in any way from the established TBA policy of the Texas Company? A. No, sir.

Q. By the way, do you know whether Mr. Arpin had any connection with the Goodrich Company before he became a Texas dealer? A. At one time he was a salaried employee for Goodrich.

Q. Do you recall Douglas C. Scott, a dealer, at 556 Candler Road? A. Yes.

Q. You had nothing to do with his installation, did you? A. Yes.

Q. You did have something to do with it? A. Yes, I did.

Q. You mean you were responsible for getting him in? A. I sure was.

Q. In connection with his installation, did you tell him—did you depart in any way from the Texas Company's TBA policy as you understood it? A. No, sir.

Q. Your experience with Mr. Scott was somewhat unfortunate, (5729) was it not?

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First, did you ever tell him that he had only a choice of either Firestone or Goodrich? A. No, sir.

Q. Do you know whether or not it is a fact that he carried non-sponsored merchandise? A. He did.

Q. And you knew about it? A. Yes.

Q. Did you make any effort to cancel him out on that account? A. I did not.

(5730) Q. You did tell us that in all the time that you were down there in Atlanta there was only one lease cancellation, when you testified before. Could you tell us who that was? A. Douglas C. Scott.

Q. That is the one we were talking about, and you installed him? A. That's right.

C. T. Fitts, for Respondents—Direct

Q. Will you tell us the reasons for cancelling him? A. Excessive drinking.

Q. You would go along with his testimony that his back room sometimes looked like a bar? A. Yes, it did.

Q. Was that one of the reasons you cancelled him? A. Yes.

Q. Did you ever talk to him about these drinking habits? A. On a number of occasions.

Q. Did you hear him testify in this case? A. I did.

Q. Was he defiant about his drinking habits when you talked to him? A. He was defiant.

Q. How about Mr. Richard Tidwell; did you have anything to do with his installation as a dealer? A. Yes, sir.

Q. In connection with his installation, did you depart in (5731) any way from the policy of the Texas Company as you understood it? A. No, sir.

Q. What had been Mr. Tidwell's experience in the service station business? A. He hadn't had any previous experience in the service station business.

Q. Did he consult with you on occasion with respect to the conduct of his business? A. Quite often.

Q. And did those consultations include anything about TBA? A. Yes, at one time he talked to us about handling TBA.

Q. What was the substance of that consultation? A. He asked my opinion about his handling a second line tire.

Q. By that, you mean an off-brand line? A. Yes, that's right.

Q. Poor quality line? A. That's right.

Q. And what did you tell him? A. We told him that he was handling premium petroleum products, and we would suggest to him that he not handle an off-line brand tire, it might create customer dissatisfaction and not only affect his TBA business but his gasoline business as well.

C. T. Fitts, for Respondents—Direct

Q. I want to ask you specifically, did you tell him on that (5732) occasion, "Dick, we can not tell you not to handle those tires, but we attempt to be more lenient or look with favor on our dealers who are more loyal to us"?

A. No, sir.

Q. That appears on page 1974 of the record.

After the time when you had this tire conversation, do you know that he carried TBA which was not in the Firestone and Goodrich line? A. Yes, he did.

Q. Do you remember any specific things in this case?

A. Yes, Lee had some Sheffield batteries.

Q. Did you tell him to get those out of the station?

A. No.

Q. Did you threaten to cancel his lease? A. No, sir.

Q. Did you tell him that you wouldn't look with favor on him unless he got those out? A. No, sir.

Q. When Mr. Tidwell decided to leave his service station, will you tell us why he told you that he wanted to leave? A. Mr. Tidwell stated that it was his decision to go with a major airline, and he would appreciate if we would find a party that had the necessary capital to buy him out.

Q. And did you do so? A. We did.

(5733) Q. And the party bought him out? A. Yes.

Q. The departure of Mr. Tidwell, did it have anything whatever to do with TBA? A. No, sir.

Q. Did you have anything to do with the installation of Mr. L. C. Smith as a dealer? A. Yes, I did.

Q. Will you tell us whether or not in connection with his installation you departed in any way from the TBA policy of the Texas Company as you understood it? A. No, sir.

Q. Did you tell him at any time that, "It would be better for him to string along with Goodrich"? A. No, sir.

Q. That is quoted from page 2112.

C. T. Fitts, for Respondents—Direct

In fact, do you know whether or not Mr. Smith openly handled TBA items which were not in the Goodrich or Firestone line? A. Yes, sir, he does.

Q. What did he handle? A. Southern batteries.

Q. Is he still a lessee? A. Yes, he is.

Q. Is he still handling Southern batteries? (5734) A. The last time I visited the service station, yes.

Q. Do you know to what extent, if any, he advertises those Southern batteries? A. Yes, he did. He advertised in the yellow pages of the telephone directory.

Q. And did that advertisement still appear in the directory the last time you had a look? A. The last time I looked, yes.

Q. Have you ever threatened him with a cancellation or treating him badly in any other way if he didn't get rid of those Southern batteries? A. No, sir.

Q. Did you have anything to do with the installation of Mr. O. L. Hardin, at 511 Flat Shoals Avenue? A. No, I did not.

Q. Was he a dealer during the time when you were zone manager in Atlanta? A. Yes, he was.

Q. Did you ever have occasion to talk to him? A. I talked to him on several occasions. I don't ever remember having any conversation with him regarding TBA.

Q. Did he ever complain to you that any kind of pressure was being put on him, or anything of that kind? A. No, sir.

Q. During your entire connection with the Texas Company, (5735) were there any instances that you know of where any dealer has lost a lease because he didn't do that which the Texas Company told him to do in connection with handling TBA? A. No, sir.

Q. The quotation relating to Mr. L. C. Smith was the testimony of Guy Scott, who purported to quote somebody else on page 2112 of the record. And the testimony con-

C. T. Fitts, for Respondents—Cross

cerning Mr. Hardin was the testimony of John D. Hulme, a salesman, who purported to quote someone else on page 1936 of the record.

As far as you know, Mr. Fitts, did you adhere to the TBA policy of the Texas Company as you have testified you understood it in connection with all of your dealers—

A. (interposing) Yes, sir.

Q. (continuing) —whom you either installed or with whom you talked or with whom you counselled? A. Yes, sir.

Q. In connection with all of these dealings with the dealers, did you have in mind as part of that policy a letter which you identified as Exhibit 26—now in evidence—when you testified previously: “I emphasize again that the Texaco dealer is an independent businessman and he must be permitted to operate as one. Anyone who violates these policies may be subject to immediate dismissal from the company’s service.” A. Yes, sir.

(5736) Q. That was a communication from the New York office to you, among others? A. Yes, sir.

Q. And had you that in mind at all times? A. Yes, sir.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. You were in the position of zone manager from January 1952 to June of 1957, Mr. Fitts? A. Yes, through June of 1957.

Q. And did you have a bit of turnover of dealers in that length of time? A. Yes, we had several dealer changes.

Q. Wasn’t it quite extensive, about a 25 or 30 percent turnover in those five years? A. I am not familiar with the percentage, but I don’t think it was excessive. We had a number of dealers in the Atlanta area.

C. T. Fitts, for Respondents—Cross

Q. How many? A. I don't have those records, but I would say in the neighborhood of 95.

Q. There were 95 dealers there approximately when you started? Now, of those 95, how many would be your approximation that changed hands, dealerships that changed hands in those five (5737) years? A. That would be impossible for me to answer. I really don't know.

Q. Can you give us some idea on a yearly basis? Or is that impossible? -A. I couldn't give you the percentage on a yearly basis, no, sir.

Q. All right. Can you tell us when your conversations took place with Mr. Ben Watkins? A. Would you clarify that? The statements regarding—

Q. (interposing) Did you help get him into a station? You were there at the time of the negotiations? A. Yes. He came to me and applied for the service station.

Q. Can you tell us when that was? A. Not offhand, without looking at the records, I could not.

Q. How about Mr. Berry? A. I couldn't give you those dates, either. I would have to refer to the records on those dates.

Q. Was the same true of Mr. Gilbert? A. Yes.

Q. And Mr. Koehler, Mr. Scott, Mr. Tidwell, Mr. L. C. Smith, and this last name I am a little confused on—S. T. Hulme? A. I don't know the gentleman. He wasn't a dealer of ours.

Q. And you can't tell us anything about their introduction into the service station business as Texaco operators, even (5738) though you negotiated those stations with them; is that correct? A. Yes, I can give you some information on the indoctrination of a dealer, when he came to us and applied for a station.

Q. I understand that. But can you give us any idea of the date when they first negotiated? A. No, sir, I cannot give you the approximate date.

C. T. Fitts, for Respondents—Cross

Q. Why do the conversations that you had with them stand out so in your mind? A. That is a strict policy of the Texas Company to explain to the dealer that he is an independent merchant, and he can buy TBA merchandise from whatever source that he sees fit.

Q. And as you interviewed each of these witnesses, I assume that you took out these policy letters and showed them to the prospective dealers? A. No, sir, I did not.

Q. You have a bag full of them at all times with you, don't you? A. No, sir, I do not. I am very well acquainted with them though, even though I don't have them in my possession at all times.

Q. On cross-examination Mr. Tidwell was asked this question: "In your transactions with Mr. Fitts there was a background of extreme close friendliness between the two of them, was there not?" Mr. Tidwell answered, "Yes, with everyone connected (5739) both with Texaco and Firestone." Was that answer untrue? A. I can't speak for anybody except myself. I was very friendly with Mr. Tidwell.

Q. Did he ever indicate to you that he might not be friendly to you? A. No, sir, he did not.

Q. What do you think of that gentleman? A. I think he is a very high-type gentleman.

Q. Did Mr. Tidwell ever take your suggestions in connection with the advice you had to offer him? A. Yes, he surely did.

Q. Did you ever display any traits or make any statements to him that would indicate that he, Tidwell, was not on a good standing with you? A. No, sir.

Q. As a matter of fact, you wrote him a letter of recommendation when he moved over to the airline, did you not? A. Yes, sir, I did.

Q. Did you praise him and his character when you wrote this letter of recommendation? A. I gave him a

C. T. Fitts, for Respondents—Cross

good recommendation. I didn't have any reason to do otherwise.

Q. In your experience with him, was he the type of man that would lie to a person? A. No, sir, I don't think Mr. Tidwell would lie.

(5740) Q. How many times do you suppose you talked to Mr. Scott about his drinking? A. I talk to Mr. Scott on a number of occasions about his drinking.

Q. Can you give us something more specific as to when, approximately? A. I can give you the approximate number of times.

Q. All right. A. I would say ten, eleven, twelve times.

Q. When did he go in that station, do you know? A. I can't tell you when he went in, but I can tell you when he came out.

Q. He has already told us that. A. Not the exact date. It was in January of—the approximate date was January of 1954, if I am not mistaken.

Mr. Lorenzen: He said he went in or out?

The Witness: In.

By Mr. Dias:

Q. Disregarding this alleged drinking for a minute, was he or was he not a good station operator? A. In some respects, yes.

Q. What respects were those? A. Well, at first he did a good business, but he started losing business prior to the time that he lost his lease.

Q. That is about what? A. Four or three year span?

(5741) How long did he do good business in your judgment? A. Well, he did a good business for about 18 months, somewhere in that neighborhood.

Q. And what do you consider good business? A. For that particular location?

C. T. Fitts, for Respondents—Cross

Q. Yes. A. I would say in the neighborhood of \$28,000 or \$30,000.

(5742) Q. What about TBA sales? A. That would have to be approximate, too, sir.

Q. All right. A. I would say in the neighborhood of \$1500 a month.

Q. And he was doing that 18 months, was he? A. I am not referring to TBA.

Q. Sir? A. I couldn't tell you about the TBA figures for that time.

Q. I wish you would. A. I have no knowledge of his TBA figures. I haven't looked at the records in a considerable length of time.

Q. I am trying to get your idea of a good operator. As I understand your testimony so far, for the first 18 months he was what you considered to be a good operator. Am I correct so far? A. Well, I would say he did a good business. He wasn't a credit to the Texas Company; no, sir.

Q. He did a good business? A. Yes, sir.

Q. And you were satisfied with his running of the station? A. Not altogether; no, sir.

Q. What complaints did you make to him during those first 18 months? A. Well, primarily for drinking.

Q. And can you tell us how often you complained about that (5743) during those first 18 months? A. Well, during the entire period of the time that he was in the service station I would say that we complained to him 10, 11, or 12 times. I can't break them down by years; no, sir. That would be impossible.

Q. How often do you suppose you visited the station in a year's time? A. I visited on a number of occasions. I would say, however, I would go by seeing Mr. Scott every 60 days or each month on the average.

Q. On each of those visits did you complain about his drinking? A. No, sir. He wasn't there a lot of the time.

C. T. Fitts, for Respondents—Cross

Q. During those first 18 months—Texas renewed his lease after the first year; is that correct? A. Yes, sir; we did. It automatically renewed itself.

Q. And after that first 18 months, is it your testimony that his business declined? A. It started declining; yes, sir.

Q. Did you then make further comments on that to him? A. We did our best to get him to quit drinking; yes, we did.

Q. What did his business drop to after the first 18 months? A. I couldn't give you the exact figures. I haven't looked at the records in some time.

Q. Were they less than \$28,000 or \$30,000? (5744) A. Oh, yes, yes, considerably less.

Q. And his TBA was less than \$1500 a month, was it? A. I don't know what his TBA figures are. I couldn't give you those figures.

Q. And how long did that continue? A. I would say primarily for the last year that he was in the service station.

Q. But when that business started declining, his lease was renewed again, was it not? A. Possibly it declined some, yes. Not to the point of being alarmed about the volume of business that he was doing.

Q. Nor about his personal habits? A. Yes, sir. We had always been concerned about his personal habits and we did our best to influence them and get him to discontinue his drinking at the service station as his place of business.

Q. Have you ever personally seen him under the influence of liquor? A. A number of occasions.

Q. What do you consider as being under the influence? A. Well, I have seen him a number of times when he was happy-handed or you could smell it on him very well, or

C. T. Fitts, for Respondents—Cross

you could tell by his conversation that he had been drinking.

Q. Does that make him incompetent to run a station?

A. I would think so; yes, sir.

(5745) Q. Did you carry on a conversation with him at the time? A. Yes, I did.

Q. And he didn't meet your approval, did he, in his condition? Is that your testimony? A. No, sir; I don't approve of even discussing business if I can help it, with a man that is drinking. But that is about the only time that I could catch Mr. Scott, when he was drinking.

Q. When did he start buying these other TBA products, do you recall? A. No, sir; I can not give you that information.

Q. Isn't it a fact that your comments, or Texaco's objection to the alleged drinking, or what they considered to be excessive drinking, only came up after he started buying other than Goodrich products? A. No, sir.

Q. Is Mr. Scott a member of the Georgia Petroleum Retailers Association? A. I do not know.

Q. Do you recall your conversation with him about the extra Coca Cola box? A. No, sir; I can't recall discussing an extra Coca Cola machine in his service station.

Q. The only thing you remember is his drinking? And the fact— (5746) A. We talked about other matters. But we were primarily concerned about his drinking.

Q. What other matters did you talk about? Do you recall that? A. Solicitation, how he was coming along with his business, service.

Q. Do you recall any complaints from customers about Mr. Scott? A. Not directly to me, but we had some complaints. In fact, we had some complaints in writing, or one complaint in writing, let me put in on that basis.

Q. Do you recall what that involved? A. Yes, sir. He had waxed a customer's automobile and apparently he, or

C. T. Fitts, for Respondents—Cross

some of his help, got into the car and had grease all over the clothes and marked up the seats.

Q. I thought there was something wrong with the wax job itself? A. I think there was something wrong with the wax job also.

Q. That is as you remember it now, that they messed up the seats? A. We had a complaint on the wax job and also the seats.

Q. What other complaint did you get on him? A. I didn't get any direct complaints. It would be hearsay if I answered that.

Q. You recall Mr. Gilbert? A. Yes, sir.

(5747) Q. Do you recall discussing hours of operation with him? A. Yes, sir.

Q. What did you tell him? A. I called Mr. Gilbert one night after I had been by the service station. I hadn't been by it to see Mr. Gilbert but I was in that area and I noticed that his service station was closed. I called him and asked if he knew that his service station was closed, because in numerous cases the dealers' attendants left with the service stations at night will close them up and go home and not maintain the hours that the dealer usually operates.

Q. That is the only reason you called him? A. Yes, due to the fact his station was closed. That is correct.

Q. You didn't suggest to him of course that he should stay open later? A. I definitely did suggest that he be competitive in his hours of operation. I thought it was good business.

Q. As a matter of fact, you insisted on it, didn't you? A. No, sir, I did not insist on it. I suggested to him that he be competitive in his hours of operation.

Q. Wasn't it because of your suggestions that he decided he couldn't stay open those longer hours, and got out? A. No, sir, it was not.

C. T. Fitts, for Respondents—Cross

Q. Why do you suppose he got out? (5748) A. He got out due to his health. His doctor's advice.

Q. What was your impression of Mr. Gilbert? A. I think Mr. Gilbert was a fine fellow.

Q. Wasn't Mr. Gilbert a member of the Georgia Association of Petroleum Retailers? A. I couldn't answer that for you. I do not know.

Q. At the time that you were negotiating this station with Mr. Gilbert, can you tell us a little bit about that? Do you recall the circumstances in connection with that transaction? A. Yes, sir. He came to my office, he and Mr. Patton, and I discussed the service station.

Q. Can you tell us when that was? A. No, sir, I couldn't give you the dates.

Q. Where did the discussion take place? A. In my office, at Dorrville, Georgia.

Q. Were you three the only people present? A. To my knowledge we were the only three, yes, sir.

Q. You are quite sure there was nobody else there at the time? A. I wouldn't say positively, but as well as I remember there were only three of us.

Q. Will you tell us what you told him at that time in connection with your recommendation of Firestone and Goodrich? A. We told Mr. Gilbert we had two sponsored lines of TBA—Goodrich and Firestone—and we recommended both of those lines to him very highly. We also told him that he was a (5749) free and independent businessman, and he could purchase from whatever sources he saw fit.

Q. And that is all? A. Yes, sir.

Q. And you and—did you say Mr. Patton? A. Yes, sir.

Q. Who is Mr. Patton? A. Mr. Patton is a salesman.

Q. And Mr. Gilbert—were the only three present? A. To my knowledge, yes.

C. T. Fitts, for Respondents—Cross

Q. If you remember the gist of the conversation, why don't you remember who else was there to the point where you can say that there was or was not anyone else there?

A. We always explain our TBA policy to every dealer that we are going to install in a service station. The company that I represent, they are very strict and insist that we explain our TBA policy. At the same time we certainly recommend the sponsored line and point out the many advantages by handling either Firestone or Goodrich.

Q. When Tidwell talked to you about those cheaper tires, do you recall the exact conversation? A. No, sir, I do not recall the exact conversation.

Q. Do you know anything or do you recall anything about the clock incident at Mr. Scott's station? A. Yes, sir.

(5750) Q. What do you remember about it? A. That is a porcelain enamel station. Mr. Scott saw fit to bore a hole in the porcelain enamel, or one panel of the porcelain enamel, and installed the clock. We suggested to Mr. Scott that he remove it and we would plug up the porcelain enamel as we were getting some leaks in the office. Apparently the water was seeping down through the masonry part of the service station from that hole in the porcelain enamel.

Q. This was just a suggestion on your part? A. Yes, sir. We did suggest to him. That is right.

Q. Didn't you about a month or two after that come around trying to sell him a clock, or a salesman? A. Definitely not. To my knowledge we have never sold any clocks.

Q. And you don't recall telling Scott that "one cold-drink box was enough." A. No, sir, I do not.

Q. These policy letters, RX-30, 31, and 32—do you want to see those again or do you recall those? A. Yes, I recall those. I looked at them a few minutes ago.

C. T. Fitts, for Respondents—Cross

Q. I am not going to ask you anything specific about them other than, have you ever shown those to your dealers in your area? A. No, sir, to my knowledge we have never shown a policy (5751) letter to a dealer. We have always relayed that to them verbally.

Q. How many repairs did you make on Mr. Berry's station, do you recall? A. I couldn't give you the number of repairs.

Q. Can you tell us that you did make repairs? A. I am sure we did. I don't usually make minor repairs. That is, the salesmen usually make minor repairs. If the expenditure involved runs over a certain amount, then I am supposed to approve the expenditure.

Q. Do you recall any expenditure that would involve an amount that would have to be approved by you in connection with this station? A. No, sir.

Q. And you don't know then whether or not the smaller repairs were made? A. I am sure during the course of time that he was in there some smaller repairs were made, but I couldn't define it.

Q. Nor can you state that there were any made, can you? You don't know. A. Not definitely, but due to the time that he was in there, I am sure that he had some trouble with some of his equipment or the building that it was our responsibility to repair.

Q. Have you personally ever escorted any Firestone or (5752) Goodrich representatives around to the stations of the various Texaco stations in your area? I am talking about Atlanta now. A. I have probably been in the service stations with Firestone or Goodrich representatives, but I can't recall any specific visit that we made, no, sir. Actually, that wasn't part of my duties as a zone manager.

Q. But it has occurred, has it not? A. I couldn't say definitely that I have ever—that I have, but there is a possibility that I have been in the service stations with a Firestone or Goodrich representative.

C. T. Fitts, for Respondents—Redirect

Q. You mentioned that Mr. Scott was the only dealer that you have checked out? What terminology did you use there? A. That was during a five-and-a-half year period, from January 1, 1952, to June 30, 1957.

Q. My question wasn't clear; I am sorry. He is the only dealer that you ever cancelled or checked out? Which term did you use? A. That Mr. Scott was the only one that lost his lease during that period.

Q. Do you distinguish between cancelling him and non-renewal of lease? A. That would be the same.

Q. It would be the same thing? A. Yes, sir.

Q. In other words, if an option or lease is not picked up, (5753) that is the same as being cancelled out, is it? A. Yes, sir. We have to give a prior written notice to the expiration date of the lease. They automatically renew themselves otherwise.

Q. How much time do you usually give them? A. I believe that is thirty days prior to the anniversary date. Either ten or thirty.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. When you stated that you thought Mr. Tidwell wouldn't tell a lie—calling your attention to his testimony to which I called your attention on direct examination—do you believe in that instance he was mistaken in his recollection? A. Yes. I don't think Mr. Tidwell remembered our conversation exactly.

. . .

E. L. Patton, for Respondents—Direct

(5754) E. L. PATTON was called as a witness, and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and address to the reporter?

A. E. L. Patton, 351 Hill Street, Atlanta, Georgia.

Q. Are you employed by the Texas Company? A. I am.

Q. In what capacity? A. At the present time I am a merchandising salesman.

Q. How long have you been employed in that capacity? A. Since July 1, 1953.

Q. And before that were you employed by the company? A. Yes, sir.

Q. What were you doing then? A. Well, from '48 to '53 I was a dealer trainer, representing dealer training. And from '48 back to 1928 I worked on various jobs from service station operation, warehouse man, cashier, assistant agent, agent, and I don't know the number of jobs that I didn't work on.

Q. Always with the Texas Company? A. Since 1928.

Q. And in the neighborhood of Atlanta? (5755) A. Atlanta and various points that they sent me to, like Savannah, Valdosta, as agent relieving where they had maybe a change of consignee or something.

Q. Was Mr. Fitts your superior during the time that he was zone manager in Atlanta? A. From July 1, 1953, until he left and was transferred to Columbia, South Carolina.

Q. During the time that you acted as dealers' training representative and the time that you have been a salesman, tell me, have you been acquainted with the Texas Company's TBA policy as set out in Exhibits 30, 31, and 32 (handing documents to the witness)? A. Yes, I am.

E. L. Patton, for Respondents—Direct

Q. Were you also acquainted with the policy statement contained in Exhibit 26? Look at 26-D and -E. A. In this book?

Q. Yes. Which concludes with the statement: "I emphasize again that the Texaco dealer is an independent businessman and he must be permitted to operate as one. Anyone who violates these policies may be subject to immediate dismissal from the company's service." A. Yes, sir, this letter was shown to me by Mr. M. D. White, when I went on the dealer training job. This letter was written before I was on the dealer training job, but he showed it to me as I was going out working with the dealers.

(5756) Q. Did you understand that you might be subject to dismissal if you didn't respect the independence of the Texaco dealer? A. Yes, sir, he made that very clear.

Q. Did you have that in mind in your dealings with the Texaco dealers with whom you came in contact? A. With every dealer that I had any contact with, yes, sir.

Q. Did you have anything to do with the installation of Mr. Herman Gilbert? A. I did.

Q. Did you accompany him to this Dorrville plant for his talk with Mr. Fitts? A. He was there on two occasions.

Q. Were you there with him? A. Yes, sir.

Q. And was Mr. Fitts there? A. Yes, sir.

Q. Was that in connection with his installation as a dealer? A. Yes, sir.

Q. At that time did either you or Mr. Fitts tell him, and I am quoting from page 2022 of the record, that you "would expect us to handle Firestone or B. F. Goodrich"? A. No, I didn't tell him that.

Q. Did you hear Mr. Fitts tell him that? A. No, sir.

Q. During that talk with him, do you recall whether there (5757) was any violation of the Texas Company's TBA policy as you understood it? A. I didn't get that.

E. L. Patton, for Respondents—Direct

(The reporter read the pending question.)

The Witness: No, sir, there wasn't.

By Mr. Lorenzen:

Q. There was not? A. No, sir.

Q. In the case of Mr. Gilbert, do you happen to know what his principal tire business was after he came into that station? A. He handled the Firestone line.

Q. Was it new tires or something else? A. No, Mr. Gilbert was in a location that handled and sold more recap tires in that neighborhood because of the clientele, the type of customers they had. Because the cars that were in that neighborhood, they sold more recap tires than they did new tires, and he bought a good many recaps from the Ponders Tires Company.

Q. That was a very substantial part of his tire business, was it? A. I would say it was 65 percent of it. The biggest part of it.

Q. Did you ever threaten to cancel Mr. Gilbert's lease or to treat him badly in any other way because he was handling the (5758) recap tires from that company? A. No, sir.

Q. Did he have much in the way of accessories in that station? A. No, sir. He didn't carry too large a stock. He just carried very few new tires. He had around maybe six or eight new tires that he had bought from the outgoing dealer who was in there before he was. I don't believe he sold more than three or four of them. The biggest part of his business was recap business.

Q. How about accessories? Did he handle filters? A. Yes, sir.

Q. Did you observe anything about those? A. He handled oil filters from two or three different sources. He bought some from Firestone and some from Westend Auto

E. L. Patton, for Respondents—Direct

Supply and from different people who come by there in the station, hauling supplies in the trucks.

He didn't carry too large a stock. He bought them as he needed them.

Q. Do you know whether Mr. Gilbert had a service station before he came with the Texas Company and leased its station? A. He had a Cities Service station on Stuart.

Q. What kind of TBA was he handling there?

Mr. Dias: I object, your Honor.

Hearing Examiner Kolb: Objection overruled.

The Witness: He had Firestone.

(5759) *By Mr. Lorenzen:*

Q. Do you know whether that was a line recommended by Cities Service? A. A. No, sir. He just handled Firestone at that station.

. . .

(5760) Q. Are you acquainted with Douglas Scott? A. Yes, sir.

Q. Did you have anything to do with him as a salesman or dealers' training representative? A. He was in my territory. I installed him in the service station.

Q. Did you go with him when he went to Dorrville to see Mr. Fitts? A. He came up to the plant to see us, yes.

Q. At that time did you or Mr. Fitts tell Mr. Scott, "You have to take your choice, either Firestone or Goodrich"? A. No, sir, we did not.

Q. At that time did you observe any violation of the Texas Company's TBA policy as you understood it? A. No, sir.

Q. Did you tell us what your understanding was of the Texas Company's TBA policy? Perhaps I forgot to ask

E. L. Patton, for Respondents—Direct

you. I just asked you if you were familiar with those letters. What was your understanding? A. My understanding of the TBA policy of the Company is that we recommend two suggested lines: Firestone and Goodrich. But when we talk to a dealer, we also make it plain to him that he does not have to buy those two lines, that it is just a suggestion and we recommend them to him because they are (5761) good tires.

Q. Was that entire policy, including the fact that the dealer could buy where he wanted to, or whatever you said, explained as far as you can recollect in each case where a dealer was installed where you were present? A. With every dealer that I have ever installed, that has been explained to him, yes.

Q. And as far as you can recollect, there was no violation, no difference in the case of Mr. Scott? A. No, sir. We never varied from that policy.

Q. Mr. Scott's lease ultimately was not renewed; do you recall that? A. Yes, sir.

Q. Will you tell us the—were you his salesman at the time? A. No, sir. Do you mean when he left the station?

Q. Yes. A. No, sir, I wasn't. Mr. Brown was.

Q. So the recommendation about cancellation came from Mr. Brown and not from you? A. That is right, sir.

Q. Were you his salesman for some time during the time he was in there? A. All the time except about six months.

Q. During those six months, will you tell us whether you (5762) had any talk with Mr. Scott about his drinking? A. Yes, sir, I did.

Q. What did you tell him? A. Well, naturally I told him I didn't think it was a good idea for him to be drinking around the station, it hurts business, business would decline, and it just wasn't a good idea for any businessman to drink while he was on the job.

E. L. Patton, for Respondents—Direct

Q. Did you observe anything about Mr. Scott's drinking while you were at his station talking to him? A. Yes, sir. I have been in any number of times and he would be under the influence of whiskey.

Q. Mr. Scott testified at Page 2016: "Mr. Patton never asked me about taking a drink. He just told me never to let anybody get drunk around there." A. I never asked him to take a drink with me, no, sir. I don't drink on the job.

Q. I don't think he meant that. He meant you never discussed with him the question of his drinking. A. I misunderstood your question there.

Q. You may have misunderstood his testimony. A. I told Doug any number of times that he should quit his drinking because it was hurting his business and took him—I mean told him that he shouldn't do it and he knew he shouldn't, that it was definitely the cause of him losing business at the station. I had any number of complaints.

(5763) Q. At any time while you were his salesman, did you make a recommendation that his lease be cancelled because of anything having to do with TBA? A. No, sir.

Q. Do you recall some dealers known as Green and Presley, at 1238 DeKalb Avenue? A. Yes.

Q. I want to call your attention to the testimony of Mr. William B. Price, sales manager of the Prior Tire Company, to the effect that Mr. Green and Mr. Presley had an old, dilapidated station. This is on Page 2081. They had an old, dilapidated station and in that station they handled Hood tires and Exide batteries exclusively. But that after a new station was built there were no Hood tires on display there at all.

I want to know whether you have had occasion to observe the type of TBA displayed by Messrs. Green and Presley, both in the new station and the old station? A. I did.

E. L. Patton, for Respondents—Direct

Q. You had some connection with that station, did you? I mean you had some duty? A. At that time I was working at the Texas Company plant in Atlanta, and I made deliveries back in 1947, 1948, and 1949 to the station.

Q. So you had a chance to see what was there? (5764) A. Yes, sir.

Q. Quite often? A. Yes, sir.

Q. Will you tell us when the station was rebuilt? A. The station was rebuilt in 1949, I believe it was. Started around 1948 and the first part of 1949. Finished in 1949 some time.

Q. Would it be your recollection that the last complete year of operation in the old station was in 1948? A. 1948, yes, sir. They started remodeling in the early part of 1949, is my best recollection of it.

Q. And the year of remodeling was 1949? A. Yes, sir.

Q. And then the first full year of operation in the new station was 1950? A. That is right.

Q. But there was some operation in the new station in 1949? A. That is right.

Q. Tell me what you observed with respect to the TBA that they had there. Was it Hood and Exide exclusively, before the remodeling began? A. He carried Hood tires and he also had some Firestone tires and Exide batteries.

Q. Will you tell me what you observed after the remodeling finished with respect to— (5765) A. He still had the Hood tires and Firestone tires because he had a very large stock and he still had them in the new station after they finished the station.

Q. Both kinds? A. Yes, sir.

Q. Do you know whether the amount of TBA that he bought from Firestone in 1948, before the station was remodeled, was less than what he bought in 1950 after the station was remodeled? A. It was practically the same.

E. L. Patton, for Respondents—Direct

Q. Within a few dollars? A. Yes, sir, within a few dollars.

Q. How about the gasoline volume? Do you know if that stayed practically the same in the old station as against the new station? A. No, sir. In 1948—do you want approximate figures on gallonage?

Q. If you happen to know them? A. I do. I happened to look it up. It was 164,000 gallons in 1948 and some odd, and in 1950—you said 1950?

Q. Yes. A. The station pumped an average of 229,000 gallons in 1950. The reason I know this, I had that station later on as one of my stations. I had the figures back for eight or ten years and I happened to be looking over them.

(5766) Q. Did the cancellation of the—you also knew you were going to testify about this? A. Sir?

Q. You also knew we were going to ask you to testify about this when you came up here? A. Yes, sir.

Q. Do you know about Green and Presley leaving that station ultimately? A. Yes, sir, I knew when they left.

Q. Did that departure have anything whatever to do with TBA? A. No, sir. They asked for us to get someone to buy them out, they were going to Florida to operate a service station in Florida.

Q. Did they do that? A. Yes, sir, they did.

Q. Are you acquainted with Mr. O. L. Hardin, a Texas dealer at 511 Flat Shoals Avenue? A. I am.

Q. There was some testimony by Mr. Hulme, at Page 1928, about Mr. Hardin, which says that "Since 1954, he (Hardin) was supposed to have said to Mr. Hulme that the Texas Company objected to having any other brand except the one particular brand in stock there."

Do you know whether Mr. Hardin carries in stock merchandise other than—I guess it must be either Firestone or (5767) Goodrich that Mr. Hulme must have had in mind?

E. L. Patton, for Respondents—Direct

A. Yes, sir. He bought tires from Gordy Tire Company and recapped tires from Ponders Tire Company.

Q. And you knew about that? A. Also, recaps from Gordy Tire Company. Yes, sir, I was a salesman at that station from 1933.

Q. Do you recommend that the station lease ought to be cancelled or he should be treated badly in some way because he was buying from the Gordy Tire Company and from Ponders Tire Company? A. I didn't say anything to him about it because he was buying at those two places.

Q. And you didn't recommend that his lease be cancelled? A. No, sir. He is still in the station. He was there Friday before I left home.

Q. Happy there, as far as you know? A. Yes, sir. They are going to build him a new station out there.

Q. There was some testimony by Mr. William Bridges, a salesman of Reddick Sales Company, Page 1944, who said that "A Texaco dealer by the name of E. A. Gresham, Moorland Avenue and Atlantic, told him in 1954 that he couldn't handle, he couldn't sell the Lee and Goodrich tubes because he has a tie-up with the Goodrich people."

Tell me, do you know what sort of tires Mr. Gresham has (5768) been selling since 1954? A. He had the Lee and Goodrich lines. He still has some Lee tires at the station now.

Q. And he has ever since 1954? A. To my best knowledge he has had some there all the time, yes.

Q. Were you a salesman for him? A. I was his salesman part of the time, 1953, 1954, and 1955.

Q. Did you ever tell him that his lease would be cancelled or some other evil fate would befall him as far as the Texas Company is concerned if he didn't stop handling those Lee tires? A. I never told any dealer that.

Q. And you didn't tell him? A. No.

E. L. Patton, for Respondents—Direct

Q. The same salesman testified that one A. B. Lloyd—this is at Page 1945—"a Texaco dealer at Jonesboro Avenue, told him that he was tied up with the Firestone people and they wouldn't like for him—that the only way that he can sell them was to just get an order for them and put them on right that same day. He couldn't stock them."

I think what he meant is that Mr. Bridges claimed he could only sell this Mr. Lloyd tires on a pick-up basis.
A. That is right.

(5769) Q. Tell me, in general, how did Mr. Lloyd handle his tires? A. That is the same station that Mr. Gilbert had. He bought out Mr. Gilbert's station. I told you in a previous statement that they sold a lot of recaps there. He did sell some of the tires to that gentleman that he is speaking of, that that gentleman was trying to sell him, I think it was Lee. But he picked them up as he sold them. He didn't put too much stock in the station, didn't carry a very large stock.

Q. Did he have a large stock of Firestone tires? A. No, sir, he did not. More recaps than anything else.

(5770) Q. Do you know anything about a former dealer named L. C. Smith? A. Yes, sir.

Q. Do you know what kind of tires—do you know whether he had a service station before he became a lessee of the Texas Company? A. Yes. He had a Gulf station.

Q. Do you know what he was handling there? A. He handled the Gulf tire and also he sold some B. F. Goodrich tires, he told us.

Q. He handled the Goodrich tires also after he went over with Texaco? A. That's right.

Q. Do you know a dealer by the name of Hardin? A. Hardin?

Q. Yes. A. Yes, I know him.

Q. We were talking about L. C. Smith. Is that the same one? A. Sir?

E. L. Patton, for Respondents—Cross

Q. Weren't we talking about L. C. Smith, who used to be a Gulf dealer? A. Yes, sir.

Q. Who is this fellow Hardin—H-A-R-D-I-N? A. He is the dealer in East Atlanta that we were talking about a while ago.

(5771) Mr. Dias: Flat Shoals?

The Witness: Yes, sir: O. L. Hardin.

By Mr. Lorenzen:

Q. He handled Gordy recaps? A. Yes, sir.

Q. Did he also handle Sheffield batteries? A. That's right, sir. I believe instead of Sheffield, it was Southern batteries. It wasn't Sheffield.

Q. Southern batteries? A. Yes, sir.

Q. I thought I had asked you but I may not have. It is quicker to ask you than to ask the stenographer to go back.

Did you tell Mr. A. B. Lloyd that he couldn't stock the kind of tires that Mr. Reddick was selling? A. No, sir, I did not.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. Mr. Patton, have you been in on many negotiations for stations, new or old, where the dealer changed? A. Only the new stations. I opened up the majority of them. Most of them are new stations, new dealers installed. There have been very few changes in my territory since I have been a salesman.

Q. Then, aside from Scott, how many would you say—
(5772) A. (interposing) I didn't have anything to do with Scott.

Q. You weren't there? A. I wasn't the salesman. Mr. Brown was.

E. L. Patton, for Respondents—Cross

Q. Didn't you say that Scott came up to the plant at Dorrville in connection with this station? A. All these fellows come up to see us about a station. That is where they come to see us, yes, sir.

Q. I guess I didn't make myself clear then.

Scott came up to Dorrville to talk about opening a station, getting a station? A. That's right, yes, sir.

Q. He spoke to you and to Mr. Fitts? A. That's right.

Q. How many similar instances have you sat in on? In other words, how many dealers have you interviewed, or prospective dealers? A. I would say ten or twelve, with other salesmen and myself, too, in my territory.

Q. In all that time that you were with the company—
A. (interposing) Yes, sir.

Q. (continuing) —in that capacity.

Can you tell us what is the usual procedure in interviewing a prospective lessee? A. Do you mean a dealer?

Q. A dealer, yes. Do you ask him for his qualifications? (5773) A. He fills out an application on credit. We have to always check the dealer's credit before he goes into a service station.

Q. And are you concerned with his prior experience? A. Well, that is all included in the application, yes.

Q. What other things are considered when you hire or take on a new lessee? A. I usually check a man's character around his neighborhood where he lives, to find out what kind of man he is. Sometimes we make mistakes, sometimes we do all right.

Q. Did you check on Scott? A. I did, but I was badly fooled on him.

Q. In what way were you fooled? A. Well, I found out about his drinking, that he just took an occasional drink. It turned out to be more than occasional.

Q. When did you first find that out? A. What is that?

E. L. Patton, for Respondents—Cross

Q. When did you first find out that he took more than an occasional drink? A. Well, Doug did good business for about a year, and then he started drinking in the station, too.

Q. When he applied for the station, is it your testimony that he didn't drink at all? A. I didn't know anything about it before he came to us. I didn't know anything about what he had done before he came to the station, no, sir.

(5774) Q. Did he at any time ever operate another station? A. No, sir. He had a bread route, the Merida Bread Company, as a salesman, a bread salesman.

Q. He came from the bread company to Texas. Those were his successive jobs? A. Yes, sir.

Q. First, as a bread salesman, and then opened up a station for Texaco? A. Yes, sir. He had been there for 15 or 20 years.

Q. Had been with the bread company that long? A. Yes, sir.

Q. In doing a little research on his background, did you find out whether or not he had been drunk with the bread company? A. No, sir. I didn't check with the bread company. I just checked out with the neighborhood, and everybody seemed to think he was a nice fellow and gave him a good recommendation. That is the only thing you can do on a character reference.

Q. You were satisfied at the time at least that he was fit to take the station? A. Yes, sir.

Q. How long after he got into the station, how long was it before you decided that he wasn't fit to stay in the station? A. I didn't—I mentioned a minute ago that it was about (5775) a year after he had been in the station that he started drinking at the station. I mentioned it to him several times that he shouldn't do it, that it was bad for his business, and didn't help him any by drinking, any man, in his place of business.

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Q. Was it your impression that he was drunk? A. No, I didn't say he was drunk. He was drinking on the job. It was bad to go out and wait on a lady customer with whiskey on his breath. I don't think it was a good idea.

Q. Did he have trouble with customers along that line? A. No, after I talked with Doug, after he started drinking he would get away from the station and leave the boys there to run the station. He did that later on. It got to where business was falling off on the service station.

Q. Do you recall the incident of the clock? A. Yes, sir, I do.

Q. Can you tell us something about that? A. I went out one day and he had this clock up on the wall, on the outside of this porcelain enamel building and drilled three holes in it. About a week or two later we had a heavy rain and water started coming into the office, in the service station there. He told me he had a leaking roof. I checked on that and found it was coming through the porcelain enamel hole where he put the clock up and we asked him to remove the clock.

(5776) Q. And that would have cured the leak, would it? A. We had to go in there and plug the holes, and finally had to put a new panel on the building, take that panel out and put a new one in.

Q. Can you tell us about that wax job? A. Yes, sir.

Q. What do you know about that? A. I remember something about the wax job. It was a customer refused to pay the credit card on it because he charged them, I don't remember the exact amount charged on the wax job, but there was a complaint there that whoever delivered the car back got all the seat covers greasy. Got them dirty and they couldn't be cleaned, and there was something wrong with the wax job, it wasn't done right.

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Q. Did you check the customer's car yourself? A. I saw the car in the station being waxed that day, but I didn't see it when it left, no, sir.

Q. You don't know whether it was a justified complaint or not then, is that it? A. Well, the customer had been a customer of the Texas Company a long time on credit cards and they made the complaint to the Texas Company.

Q. And you just automatically pay all complaints? A. No, sir. Mr. Scott paid the customer the money back himself, after arguing with the customer quite a while he (5777) finally paid the customer, refunded the money to him.

Q. He would have no occasion to refund the money to the customer if it was put on the credit card, would he? A. He didn't pay for it.

Q. Sir? A. He didn't pay the Texas Company.

Q. Who didn't? A. The customer.

Q. That is the point. Wasn't the wax job put on the credit slip? A. That's right.

Q. Then, why would Scott pay the customer? A. The customer refused to pay for the job.

Q. Then, the customer got a wax job and \$10.00 to boot? A. No, sir, he didn't get the money. Doug paid the Texas Company.

Q. He paid the Texas Company and not the customer? A. Yes, sir.

Q. As a matter of fact, he gave you the money? A. No, sir. He turned it in to a driver.

Q. You weren't the driver at that time? A. No, sir. I was a salesman.

Q. Wasn't there a little difference of opinion on that job as to whether or not the job was or was not faultily done? A. No, sir. His son was in the station, and I remember now (5778) that we are talking about it, his son which does work with him there at the time, got two

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colored boys who had done the job and made them go back and try to clean the seat. That is what his son told me—before the job left. It wasn't done right because the son said something to me about it before it left the station.

Q. In connection with Mr. Gilbert, were you at the Dorrville plant when negotiations went on with him for the station? A. I was.

Q. And who do you recall being present at that time? A. Mr. Gilbert was up there twice, to the best of my recollection. He came up once. Mr. Fitts was there to talk to him. The second time he come up his nephew was with him. Mr. Fitts wasn't there.

Q. Mr. Gilbert's nephew was there? A. Mr. Gilbert's nephew. I believe it was the nephew, yes. He helped him run the station for a while.

Q. You don't know his name, do you? A. I can't recollect. He didn't stay with him about two or three months. I don't remember his name at the present time.

Q. At any rate, Gilbert visited Dorrville on two occasions? A. That's right.

Q. On one occasion he spoke to Mr. Fitts and yourself? A. That's right.

Q. That was the first visit, was it? (5779) A. Yes.

Q. And at that time Mr. Gilbert was alone, was he? A. Yes, sir, he was. He brought his nephew back the second time.

Q. How long after the first visit, do you recall? A. It was the next week, as best I can remember.

Q. Mr. Fitts was not present? A. No, sir.

Q. You spoke with him alone? A. Yes, sir.

Q. When did he sign his lease? A. I don't remember the exact date.

Q. I didn't mean the date. I mean, did he sign the lease on the first visit or the second? A. He didn't sign the

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lease on either visit. He signed the lease at the station when we took inventory with the dealer, Mr. Dean, who was there. He signed the lease the day he went in the service station.

Q. And was the nephew there with him at that time?

A. Who?

Q. His nephew? A. Yes, sir.

Q. Were you and Mr. Fitts both there at that time?

A. No, sir. Mr. Fitts wasn't there. I was there.

Q. Then, actually that would be the third occasion, wouldn't it? The visit with Mr. Fitts and yourself at Dorrrville; then, (5780) the second one with Mr. Gilbert and his nephew and yourself— A. (interposing) That's right.

Q. (continuing) —at Dorrrville; and the third time was with you and Mr. Gilbert at the station when he signed the lease. Is that correct? A. That is the usual procedure. You sign the lease when you check the man in the service station, yes, sir.

Q. And you knew where he was buying his TBA, did you? I think you said Ponders Tire Company? A. Yes, sir, he bought some recaps from Ponders.

Q. Where else did he buy? A. Firestone Tire and Rubber Company.

Q. Do you recall any other place? A. Yes. He bought accessories from Genuine Parts Company, and he bought them from Westend Auto Supply.

Q. Anybody else? A. I imagine so, but I don't remember the exact names of the companies he bought from because he was in business in a Cities Service station. He had been buying for years from that station and I imagine he bought from several other companies, yes.

Q. You know he bought from these? A. I know he bought from those two, yes.

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Q. You saw the salesman in there, did you? A. Yes, I have seen the salesman in there.

(5781) Q. For each? A. And the trucks, too, bringing the merchandise in.

Q. How often did you visit Mr. Gilbert's station? A. Well, at that time I had about 18 stations. I got around to every one of my stations at least once a week and sometimes more. He was close to my neighborhood, not too far from where I live, and I got there quite often.

Q. What was the occasion for your visit to these stations? What transpired? Did you try to sell gasoline and oil and that sort of thing? A. Yes, sir. Naturally, we try to sell our own products, gasoline and oil. Of course, gasoline, we don't fool too much with taking orders on gasoline because that is handled through a dispatcher. But on the oils and greases, the salesman checks stocks, talks to the dealers about merchandising oil, and we work with him on the S-75 system, the follow-up system which helps get more customers into the station and make more revenue out of the business, and make house-to-house calls, call on people in the neighborhood, business people.

Q. You do that for the dealer? A. Yes, sir. We work with him and ask him if he has any problems. You also have to look after the maintenance of the building.

Q. How about his bookkeeping? Do you help him with that? A. I usually recommend if he hasn't got a bookkeeper to get (5782) a good set of books and have a bookkeeper keep his books for him, because a service station man doesn't have time to keep books and try to sell and do the right selling job. It is cheap enough to have a bookkeeper.

Q. Doesn't Texaco have some sort of bookkeeping system that they recommend? A. Well, no, we don't have any ourselves. We recommend they get a good bookkeeping system from some source: National Cash Register,

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different local bookkeeping companies in Atlanta. We recommend that they have a good bookkeeping system.

Q. How about record keeping in general? Do you help with that? A. Yes, sir.

Q. Straighten out his files and that sort of thing? A. I never did go in a man's files unless he asked me about something. If he wanted to find out something, to be straightened out, I wouldn't go in his office through his desk or something like that. It wasn't my place.

Q. On this Green and Presley station, can you tell us the source of their TBA now? A. They are not in business there anymore.

Q. I realize that. A. You mean what they are doing now?

Q. No. You mentioned that they had an old station between '47 and '48, built a new station, building in '49 and completed (5783) in '50. A. Completed in '49.

Q. Then, you mentioned that at the old station they carried Hood, Firestone, Exide batteries, and in the new station they carried Hood and Firestone. A. He carried batteries, too.

Q. Firestone? A. They hadn't completely closed down. They kept the little building over there, a shack where they kept the merchandise in, and carried the tires and things home, and when they got the new station built they put them in there when they opened up.

Q. In other words, when they took in the new station, they took in there the stock that they had in the old? A. Yes, sir.

Q. Do you recall the size of their stock of Exide batteries and Firestone tires and so on? A. I would say, I don't remember the exact number, they had anywhere from 20 to 30 tires on hand at all times.

(5784) Q. Was that Firestone? A. It would be Firestone and Hood. Hood and Firestone is what they carried.

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Q. How many Hood did they have in that batch, do you have any idea? A. I would say it was 50/50.

Q. And they continued to carry those Hoods all the time they were in the new station? A. They carried them up until the latter part of '49 and they changed then to B. F. Goodrich.

Q. Goodrich? A. That's right.

Q. Did they have Goodrich and Firestone then, those two lines? A. No, sir. They carried Firestone—they went to B. F. Goodrich line in the latter part of '49 and the station was completed, because B. F. Goodrich warehouse was located just down the street from where they built and it was more convenient for them to go down there and get their purchases. That is what they told me.

Q. When they were in the new station they carried the B. F. Goodrich line? A. Yes, sir.

Q. Batteries and accessories? A. Yes, sir.

(5785) Q. The full line of TBA? A. I imagine so. They bought from other sources besides B. F. Goodrich.

Q. They did— A. They still bought tires and I imagine they bought some more Hoods, too. They didn't stock a complete line of all of them but they bought them on a pick-up basis.

Q. You know that they took on the Goodrich line? A. Yes, sir; they put in B. F. Goodrich.

Q. Mr. Hardin—is that H-a-r-d-i-n? A. It is H-a-r-d-i-n.

Q. In addition to purchases that they made from Gordy and Ponders, who else did they buy from? A. Firestone.

Q. And do you recall what they purchased from Firestone? A. They purchased tires and they purchased accessory items.

Q. How about some of those dry batteries? Did they get those from Firestone? A. They did, when they first

E. L. Patton, for Respondents—Cross

opened up, buy Firestone batteries but they switched to the other battery line.

Q. Which other? A. You just called it a while ago. What was it? Southern batteries?

Southern batteries is what they had.

Q. That was it? (5786) A. Yes, sir. They still have it.

Q. How about accessories? Did they carry Firestone accessories, too? A. They bought some because the Firestone Auto Supply store was up the street from their station. They bought some, and they bought from other sources, too.

Q. Mr. Gresham, I believe you said he carried Lee and Goodyear tires? A. That's right. 6

Q. Can you give us some idea of how many of each? A. Gresham carries anywhere from 20 to 40 tires, I think, in his station most of the time. About that many.

Q. How many would be Goodrich and how many Lee?

A. It varied. I would say maybe 50/50, is about what he had, about the time he is talking about.

Q. How about batteries and accessories? Do you recall what he purchased? A. Yes, sir. He bought some accessories from B. F. Goodrich and he bought from Genuine parts in East Atlanta, and he also bought from the Firestone store. He bought some accessories from them. East Atlanta Auto Supply, too.

Q. How about this L. C. Smith? What tires did he carry? A. L. C. Smith had the B. F. Goodrich line of tires.

Q. How about batteries? A. He had B. F. Goodrich batteries, and I believe Southern (5787) batteries. He sold some of those.

Q. Not many of those? A. Yes, quite a few.

Q. How about accessories? A. I imagine B. F. Goodrich accessories. I didn't call on L. C. Smith. I was a

E. L. Patton, for Respondents—Cross

salesman. I did know he had the B. F. Goodrich line in his station.

Q. You knew that? A. Yes. I helped him open the station up. I was on a different job then as dealer training.

Q. What is that, "dealer training"? A. Dealer training?

Q. Yes. A. Working with the service station man.

Q. You go from station to station giving advice? A. That, and also holding conferences. On product information and things like that.

Q. Do you carry out the Texaco policy recommending Goodrich or Firestone TBA? A. A dealer's training job, he doesn't go into dealers to recommend anything to him. You go in there in a meeting with the idea of bringing information to him, a merchandising idea, helping him to sell more of the petroleum products and also TBA—tires, batteries and accessories.

Q. And you never recommend TBA to him? (5788) A. Not as a dealer training, you wouldn't; no, sir.

Q. How many stations do you cover now? Let me first of all ask this: At this time you are a merchandise salesman, is that correct? A. That's right.

Q. And have been since July 1, 1953? A. That's right.

Q. During that period—just restrict your answer to that period, July 1, 1953 to date—you call on you think 18 stations throughout Atlanta in your territory? A. You mean now?

Q. Yes. A. I have 28 now.

Q. It grew from 18 to 28 over the years from July, 1953 to now? A. Yes.

Q. Of those 28, can you tell us how many carry Firestone and/or Goodrich products? A. Of the 28 right now?

Q. Yes. A. I could if I took a pencil and paper and figured it out right quick, if you want me to. I can just

E. L. Patton, for Respondents—Cross

jot down which ones are which. I have some dealers who have U. S. Royal.

Q. All right. Mention those, too.

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(5789) A. This is about right. I think there is one station under construction. I said 28. A lot of those stations sell those brands of tires but carry other tires, too.

Mr. Dias: I would like the record to show that there are 12 stations carrying Firestone products.

By Mr. Dias:

Q. Is that correct? A. Yes.

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(5790) A lot of them carry most of them and other tires, too. You asked the question, how many carry different lines. I told you those were the lines. They carry other tires, too. If you did that you would have about twice as many stations listed there.

Q. You have counted your 28 stations? A. Yes, sir.

Q. And the figures you gave us here show the number of stations that carry Firestone? A. Yes.

Q. The number of stations that carry Goodrich? A. Yes, sir.

Q. And the number of stations that carry U. S.? A. You can take some of those carrying U. S. They have Firestone tires, too.

Q. There are four shown for U. S. How many of those four (5791) also carry Firestone? A. Two of them.

Q. Two of the four also carry Firestone? A. That's right.

E. L. Patton, for Respondents—Cross

Q. And is the same true with Goodrich and those that you listed under Goodrich and Firestone? Some of them carry both or all three? A. They carry them or pick them up and sell different brands. They have both lines.

Q. Listed under Goodrich there are 10 stations listed as carrying Goodrich. That gives us a total of 26 out of the 28. What about the other two stations? A. One of them is under construction and is not quite completed yet. It is in my territory. I haven't anybody assigned to it. And the other carries Armstrong batteries. I didn't list that because you didn't ask me about it.

Q. I am coming to it.

Is he a lessee? A. He is a Texaco third party lease dealer.

Q. Then we will alter the list to show one Texaco lessee carrying Armstrong. Are those the full 28 stations? That accounts for the 28 that you cover? A. Those are the ones I call on, yes.

Q. What is your area, by the way? A. It is part of the Southeast side of Atlanta and all of (5792) the Southwest side of Atlanta. I have one station in Covington, Georgia. He also has—I made a mistake. He has Armstrong tires, too. Doug Ivey.

Q. What is the name of the other gentleman who carries Armstrong? A. Mr. Roy Thornton, and Excello batteries.

Q. How do you spell his name? A. T-h-o-r-n-t-o-n.

Q. Is that the name of the station or is there a trade name? A. Roy Thornton Service Station and Doug Ivey Service Station.

Q. Did I ask you about Mr. L. C. Smith? A. Yes, sir.

Q. Who has Mr. Scott's station right now? Douglas Scott? A. Who is the salesman?

Q. No. Who is running the station? Is that your territory? A. No, sir; that is not my territory.

E. L. Patton, for Respondents—Redirect

Q. How about Mr. Gilbert? A. Mr. Gilbert's station?

Q. Yes. Do you know who is running that? A. Yes. Mr. Roy Cook.

Q. And do you know the hours he keeps there? A. He opens at 7 and closes at 10:30 to 11:00 o'clock at night.

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(5793) *Redirect examination by Mr. Lorenzen*

Q. On this Green and Presley situation, I don't know whether we got confused on dates. I noticed, I think on direct examination, that that old station was in operation all of 1948. A. 'Forty-eight.

Q. And it was rebuilt in 1949? A. 'Forty-nine.

Q. And it was operated again for a complete year, 1950; is that right? A. That's right.

* * *

(5795) Q. When did the change to Goodrich come? Some time after that? A. The latter part of 1949 is when they changed to B. F. Goodrich, after the new station was completed they went to B. F. Goodrich, yes.

Q. So the change to Goodrich was— A. In 1949.

Q. In 1949? A. Yes, sir.

Q. Now about these tire figures that Mr. Dias put in the record that he invited me to ask you about some more. Those numbers that you gave him showing dealers who handle the Firestone or Goodrich or US or Armstrong line don't mean that those dealers don't handle some other line, too? A. You mean just a while ago?

Q. Yes. A. Thornton?

Q. No, all of them. A. They all handle different lines of tires, yes, sir. They can handle anything they want. They can buy from any source they want to.

Q. And they do handle different lines? A. Yes, sir.

E. L. Patton, for Respondents—Redirect

Q. So what you gave him was only the principal line of each one? (5796) A. Yes, sir.

Q. And not other lines that they might handle? A. Dealers don't sell—if a customer comes in and wants to buy a tire, he is crazy if he doesn't go out and get that tire rather than lose that sale. I would want to do it.

Q. These fellows who handle the Armstrong tires, they display those tires? A. Yes, sir.

Q. Can any other dealer of a Texas Company who happens to go by the station belonging to this station see those tires? A. Yes, sir, in the shed.

Q. And do those Armstrong fellows attend dealer meetings? A. Yes, sir.

Q. And you don't keep them apart from the other dealers so that he can't talk to them? A. No, sir.

* * *

(5797) Q. Do you go to these dealer meetings? A. I hold the dealer meetings.

Q. After the meetings do the dealers talk with each other? A. Sometimes they sit around for an hour or two and talk, yes, sir.

Q. They talk shop? A. They just talk in general about different things, yes, sir.

Q. Do they talk about their service stations? A. They exchange ideas on how to operate their business.

Q. And you say these two Armstrong fellows attend the meetings, too? A. Yes, they come to the meetings.

Q. Mr. L. C. Smith, who you said handled Southern batteries, of course he is still a dealer as far as you know? A. Yes, sir. A good one.

Q. And he does a big business in Southern batteries; do you know that? (5798) A. He still has Southern batteries at his station.

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E. L. Patton, for Respondents—Recross

By Mr. Lorenzen:

Q. On direct examination do you recall there was a question as to whether the TBA on which the Texas Company got commissions sold by Messrs. Green and Presley was about the same in 1948 as it was in 1950? A. Yes, sir.

Q. Do you recall that? (5799) A. Yes, sir.

Q. Didn't you tell me that within a few dollars it was the same? A. About the same within two or three dollars difference.

Q. And wasn't that based upon your looking up the records to see what the amount of the commissions were that the Texas Company got? A. Yes, sir, it was.

Q. And do you know approximately what it was in 1948 and what it was in 1950? A. You mean about the amount of money?

Q. Yes. A. About \$115 and a few cents in 1948, and around \$118 in 1950.

Mr. Lorenzen: Does that clear it up?

Further recross examination by Mr. Dias:

Q. Do you keep current with these commissions that are earned? A. Do I keep current with them?

Q. Yes, with commissions that are earned by various stations on behalf of Texaco. A. In my territory, yes, sir.

(5800) *By Mr. Dias:*

Q. Let me ask one more question. As a merchandise salesman you do keep track of these commissions that are earned? A. No, sir, I don't.

Q. You do not? A. No, sir.

Q. You do keep track of the merchandise that they buy? A. Well, I know pretty well how much they buy. The

E. L. Patton, for Respondents—Resumed, Redirect

service station stock. I know what they are buying. After 29 years I ought to be able to know a little bit about it.

Q. Yes. And you know the wholesale and retail prices.

A. That is right. I know what they buy because I have run the stations myself for dealers and have seen the merchandise. A lot of times they will be out to lunch. I know what they pay for them.

(5801) Q. And of course you know what they sell for?

A. Sure. I buy them for my wife's car sometimes. I ought to know what I pay for them.

Q. Is that the only way you know what the general resale price is on these items? Or do you just keep familiar with that? A. Naturally, me being a salesman of the Company, I would know what the—going around service stations—what dealers sell merchandise for. It is marked on the shelves.

Q. I understand. I agree that is so. But you limited it to your wife's car. A. I thought that is what you asked.

Q. No. I wanted to know as a general proposition—

A. Most dealers mark their merchandise, the retail prices on their merchandise.

Q. And you also know what they are paying for it when they buy it? A. I know sometimes what the price is, yes. Sometimes I don't.

Q. Sometimes— A. The prices on tires and batteries vary from time to time. It is hard to keep up with it even being a dealer. They change a lot.

Q. You can make a pretty good estimate, can you? A. Yes, I believe I could.

(5802) *Further redirect examination by Mr. Lorenzen:*

Q. At any time have you used these estimates or whatever you call it, as the basis for threatening a dealer with lease cancellation or any other unfavorable conduct if he

E. L. Patton, for Respondents—Resumed, Recross

didn't buy some or all of the Firestone or Goodrich line?

A. No, sir, I have never threatened any dealer.

Q. You didn't produce those figures for any such purpose, did you? A. No, sir.

(5803) *Further recross examination by Mr. Dias:*

Q. Do you use those figures to further urge dealers to buy the sponsored products? A. I don't use the figures in that respect at all. I think you misunderstood me. I just know what the prices are, after being a salesman.

Q. I understand. You don't use that information to threaten people to buy? A. No, sir. Never have.

Q. But if they are not buying as much Firestone or Goodrich as you think they should, do you urge them to buy?

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A. I don't tell a dealer what to buy at all. I told you that at the beginning. I tell them to buy what they want to. I don't tell a dealer what to buy. They are independent merchants and buy what they want.

Q. I understand that. As a salesman, isn't it your duty to promote your products, to promote the sale of your products? A. Texaco products, yes.

(5804) Q. Doesn't Texaco promote the sale or suggest that dealers purchase Firestone and Goodrich TBA? A. We recommend the two lines to them, yes.

Q. If a dealer's sales or purchases of Firestone or Goodrich products are not what you think they might be, or could be, do you urge or recommend that that dealer buy more and sell more? A. No, sir.

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B. C. Chiles, for Respondents—Direct

(5805) B. C. CHILES was called as a witness for the Respondent and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Please state your full name. A. B. C. Chiles, 334 West Cottage, Pulaski, Tennessee.

Q. You operate a service station, do you? A. I do.

Q. Where? A. Pulaski, Highway 64-West.

Q. You sell Texaco gasoline? A. I do.

Q. Do you have a lease from the Texas Company which renews itself each year? A. I do.

Q. And you have been at that location for 12 years?

A. Yes, sir.

(5806) Q. What is the gallonage of your station? A. About an average of 15,000.

Q. Do you handle TBA? A. I do.

Q. Do you find it helps you in your business? A. I do.

Q. Is that why you handle it? A. Yes, sir.

Q. What kind of TBA do you have there? Let's start out with the name of the tires and how many of each you have in stock. A. At present I have about 40, something like that, Dunlop, and about 25 Greer. And about seven or eight National.

Q. Do you have any Firestone? A. I think there are two.

Q. Is that about the way your stocking has been for some time past? A. It has.

Q. This Greer line is one that you have had on and off? A. I have had it on and off for the past six years.

Q. What happens when you don't have Greer? Do you have more of some other brand or Dunlop? A. Usually.

Q. What other brand? A. Dunlop.

Q. You have more Dunlops when you don't have Greer? (5807) A. That's right.

B. C. Chiles, for Respondents—Direct

Q. What about batteries? A. Hester.

Q. And about how many of those do you have? A. I usually stock about eight.

Q. What did you have before you carried Hester? A. Winters.

Q. That was some five years ago? A. About five.

Q. What did you have before you had the Winters? A. Southern.

Q. You opened with those? A. I opened with Southern.

Q. How about your accessories; from what source do you get those? A. Parts houses—auto parts.

Q. Do you get any of those from either a Firestone or Goodrich supply point? A. No, I don't.

Q. So, the only thing that you get from either Firestone or Goodrich is you pick up a tire or two once in a while? A. That's right.

Q. And that is the extent of your purchases of Firestone or Goodrich? A. Yes.

(5808) Q. And that has been true for years before today? A. Yes.

Q. Do you advertise the Dunlop tires? A. I do.

Q. Are you listed in the phone book under any TBA item? A. I think so. I am not sure the way it reads. I just renewed it and I don't know how the new one reads.

Q. What is your best recollection? A. Dunlop and Firestone tires, I believe.

Q. You think you are listed under both? A. Yes, sir.

Q. How about your display? Do you display the Dunlop tires? A. I do.

Q. And the Greer tires? A. I do.

Q. In this last go around with Greer, you have just taken them on within the last six months? A. That's right.

Q. Do you display your Hester batteries? A. I do.

Q. Do you have a sign in the window about those? A. Yes, I have a light.

B. C. Chiles, for Respondents—Direct

Q. A light sign? A. Yes. It is about three feet long by 12 inches wide with a fluorescent light.

Q. And that sign you haven't had there too long, have you? (5809) A. About six months, I think.

Q. And before that, did you have any sign advertising Hesters? A. No. I had a Dunlop sign in the window.

Q. Dunlop sign? A. Yes.

Q. Inside your store do you still have a franchise Dunlop dealer sign? A. I do.

Q. Is that quite visible? A. Yes.

Q. Anybody can see it? A. That's right. Driving along in front of the station you can see it.

Q. Can anybody see the Dunlop tires? A. Yes. They are in the rack.

Q. And the Greer tires? A. That's right.

Q. You make no effort to hide them? A. No.

Q. What sort of fanbelts do you have? A. Dayton.

Q. Do you display those on the rack with the name "Dayton" on it? A. The rack across the back end of the lube and wash bay. It runs all the way across.

(5810) Q. Does it have the name "Dayton" on it? A. It does.

Q. During the time you have been in this station, has the Texas Company furnished you with any new pumps? A. Yes.

Q. And has the Texas Company painted your station? A. Yes.

Q. At any time has any one from the Texas Company threatened you with a cancellation of your lease, or suggested to you that you would be treated badly in any way if you didn't buy some or all of the Firestone or Goodrich line? A. No.

Q. You said that you were listed under Firestone tires. Do you find that—tell me whether or not there is a class of your customers who you find are attracted by the Fire-

B. C. Chiles, for Respondents—Direct

stone advertising? A. Well, I find it helps the transient trade.

Q. The transient trade you think is helped by the Firestone sign? A. I think so.

Q. And you sell your Dunlop tires mostly to your local customers? A. That's right.

Q. Just give us the name of the principal supply house from which you buy your accessories? (5811) A. Church Auto Parts; Lewisburg; D. H. Diegler; and—there are different ones. I have several more. I guess Motor Parts. I guess that is about it.

Q. Has anyone from the Texas Company ever suggested to you that you shouldn't display these items of TBA? A. No.

Q. Or that any kind of reprisal would be taken against you if you did display the Dunlop line or the Hester line? A. No.

Q. Or the Greer line? A. No.

(5812) Q. Have you, during the time you have been a dealer, attended dealers' meetings? A. I have.

Q. Where, and about how many dealers have been there? A. Well, we usually have a spring dealer meeting once a year, and as well as I remember I haven't missed one since I have been with the Company. I haven't missed any.

Q. About how many dealers are there? A. I would say, from 100 to 150.

Q. At any of these meetings has any one from the Texas Company ever suggested that any dealer would have his lease cancelled or would be treated badly in any way if he didn't buy some or all of the Firestone or Goodrich line? A. No.

Q. Have you become acquainted with any of the dealers in those meetings? A. Several of them.

B. C. Chiles, for Respondents—Cross

Q. At any time, have any of the dealers told you that the Texas Company had suggested to them or threatened them with lease cancellation, or with any other kind of bad treatment if they didn't buy some or all of the Firestone or Goodrich line? A. No.

Q. Have you felt all along that you are free to buy any TBA that you thought was best for you? A. Yes.

(5813) Q. Have you acted on that idea? A. I have.

Q. Have you understood that the Texas Company does recommend Firestone and Goodrich? A. Yes.

Q. You have known that? A. I have known it ever since I have been with the Company.

Q. And you have also known that you could buy where you wanted to if you didn't want to go along with the recommendation? A. I have.

Mr. Lorenzen: That is all.

Cross-examination by Mr. Dias:

Q. How many are "several," Mr. Chiles? You mentioned that you knew several of these dealers at the meetings. A. I would say approximately 10 or 15.

Q. Do you know who owns the property that your station is on? A. Yes.

Q. Who? A. Jimmy Townsend. That is all I know, just Jimmy Townsend.

Q. Any relative of yours? A. No.

Q. Friend? A. No. I have only seen him one time. I met him one time, that I can recollect.

(5814) Q. Can you give us the date that you started with Texaco? A. 'Forty-six.

Q. 'Forty-six? A. February, 1946.

Q. And you have been with them continuously since then? A. I have.

B. C. Chiles, for Respondents—Cross

Q. Do you have another station? A. Not now.

Q. Did you at one time? A. I did.

Q. Where was that located? A. The north end of town, North First Street.

Q. Was that another Texaco? A. No.

Q. What was that? A. Shell.

Q. When did you give that up? A. In October.

Q. Of which year? A. Last year.

Q. Nineteen— A. 'Fifty-seven.

Q. Did you transfer your stock from that Shell station over— A. I did not.

(5815) Q. You sold that out complete? A. Yes.

Q. Do you get any of your TBA products that you stock now on consignment? A. No.

Q. Can you give us some idea of the size of Pulaski? A. About 7,000.

Q. Are there other Texaco stations in town? A. One more.

Q. Where is he located? A. North First Street. Highway 31, North.

Q. That isn't your "ex-" Shell station, is it? A. No.

Q. Do you know what kind of TBA he carries? A. Gillette, I think.

Q. Is there a Firestone retail outlet in town? A. Yes.

Q. Where is that located? A. Tennessee Recappers, North First Street.

Q. How far are you from— A. You said "retail"?

Q. Yes. Store or station or anything else? A. It is retail.

Q. That is North First Street? A. Yes.

(5816) Q. How far are you from North First Street? A. Four blocks. Wait a minute. North First Street, he is about a half-mile from where this place is located.

Q. Is that the only place in town where you can buy Firestone products? A. No.

B. C. Chiles, for Respondents—Redirect

F. H. Worsham, for Respondents—Direct

Q. What is the closest place to your station that you can buy Firestone? A. Texas Company.

Q. Texas Company? A. The consignee.

Q. Where is he located? A. A quarter of a mile from Route 64 Highway.

Q. Are you related to the consignee? A. No, sir.

Q. How about Goodrich? Where is the nearest retail outlet for Goodrich? A. About 18 miles.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. How far do you have to go to get Dunlop or Good-year tires? A. About 70 miles. Nashville.

Q. And your Firestone consignee is within a quarter mile of you? I mean the Texas consignee who handles Firestone is (5817) within a quarter mile of you? A. That's right.

Mr. Lorenzen: That is all.

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(5822) F. H. WORSHAM was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name to the reporter please?

A. F. H. Worsham.

Q. Where do you live? A. Grenada, Mississippi.

Q. Are you in the service station business? A. Yes, sir.

Q. Where is that located? A. U. S. Highway 51.

Q. In Grenada? A. In Grenada.

F. H. Worsham, for Respondents—Direct

Q. Do you sell Texaco gasoline there? A. Right.

Q. Do you lease your service station from the Texas Company? A. Yes, sir.

Q. Do you have one of these leases which renews itself each year? (5823) A. Yes, sir.

Q. About what is the gallonage of your station? A. About 18,000.

Q. Do you handle TBA at the station? A. Yes, sir.

Q. Why do you do that? A. To make money.

Q. What kind of tires do you have there? A. General.

Q. About how many do you have in stock? A. About fifty.

Q. Do you stock any other tires? A. No.

Q. What sort of batteries do you have there? A. Southern.

Q. About how many of those do you have in stock? A. About 12 or 15.

Q. Do you stock any others? A. No.

Q. How about your accessories? Generally from what source do you buy those? A. Independent jobbers—D&N, Osborn-Abston.

Q. Is that where you get most of your accessories? A. That is right.

Q. That includes Dayton fan belts and radiator hose? (5824) A. That is right.

Q. Do you display that on Dayton racks? A. Cabinet, yes, sir.

Q. Dayton cabinet? A. Yes, sir.

Q. And they have the name Dayton on them? A. Yes, sir.

Q. Do you buy anything from Freeman Tire and Supply Company? A. A few tires.

Q. What kind of tires? A. Goodrich.

Q. And do you stock those or is it on a pick-up basis? A. On a pick-up basis.

F. H. Worsham, for Respondents—Direct

Q. Do you display your General tires? A. Yes, sir.

Q. And your Southern batteries? A. Yes, sir.

Q. Openly? A. Yes, sir.

Q. And the same goes for all of your accessories? A. That is right.

Q. Do you try to hide any of them? A. No, sir.

Q. Does the Texas Company know that you stock these Generals and Southern batteries and the Dayton belts? (5825) A. Yes, sir, I guess so.

Q. Does the Texas station manager come into your station quite often? A. Yes, sir, about once a week.

Q. He lives in your town? A. Yes, sir.

Q. You display those General tires in the front of your station, do you? A. Yes, sir.

Q. Anybody can see them? A. That is right.

Q. Where are your Southern batteries displayed? A. They are in the office, in the window.

Q. In the window of the office? A. Yes, sir.

Q. Where anybody can see them? A. Yes, sir.

(5826) Q. Tell me, even though you don't stock any Goodrich tires, don't you have a Goodrich decal in that station? A. I have decals on my windows, yes, sir.

Q. You have a decal in your window? A. Yes, sir.

Q. Will you tell us the reason for having that? A. Well, to attract tourist business mostly.

Q. You think the name "Goodrich" attracts tourist business to your station? A. I think so. It is a popular brand.

Q. Is that the reason you have this sign even though you don't stock any of the tires? A. That's right.

Q. Tell me, do you have an understanding as to what the Texas Company's TBA policy is? A. Yes, sir. To sell either Firestone or Goodrich.

Q. You know that they sell it and recommend it? A. Yes, sir.

F. H. Worsham, for Respondents—Direct

Q. Do you also know that you could buy any place you wanted to? A. Yes, sir.

Q. And you did do so? A. I did.

Q. And you are doing so now? A. Yes.

(5627) Q. Percentagewise, have you got any idea of how much this pick-up of Goodrich tires amounts to, of your total? A. Probably 15 percent of my sales.

Q. And that is the total of the Firestone or Goodrich line that you buy? A. That's right.

Q. That is all? A. That's right.

Q. Do you find that you get any help from the Texas Company in connection with marketing your TBA? A. Repeat that, please.

Q. Do you figure you get any help from the Texas Company in selling the TBA to your customers? A. Yes, sir.

Q. What sort of help do you think you get? A. Well, selling on the driveway teaches you to sell; merchandising.

Q. Where do you find that the Texas Company gives you that kind of help? A. At the sales meeting, training meeting.

Q. How many of those meetings do you attend? A. About twice a year.

Q. About how many dealers attend those meetings? A. In the spring meeting, I would say 25, and just a regular dealer meeting, probably about eight.

(5828) Q. Do you know what is the division point of the Texas Company which has to do with your station? A. Will you repeat that please.

Q. Do you know what the division point is of the Texas Company, where the division manager is? A. Yes, sir.

Q. Where is it? A. Jackson, Mississippi. The division manager.

Q. He is at Jackson? A. I believe so.

Q. Is there any connection with New Orleans? A. Yes, sir. New Orleans is division headquarters, I believe.

F. H. Worsham, for Respondents—Direct

Q. New Orleans is the division headquarters? A. I think so.

Q. And you are in the Jackson district? A. Yes, sir.

Q. At any time in the course of those meetings has anyone from the Texas Company suggested that any dealer's lease might be cancelled or that he would be treated badly in some other way if he didn't handle some or all of the Firestone or Goodrich line? A. No.

Q. Have you become acquainted with the dealers, other Texaco dealers at those meetings? A. Well, yes, sir.

(5829) Q. Do you know some of them well enough to talk to? A. Yes, sir.

Q. Have you talked to quite a few of them? A. Oh, yes.

Q. Have you talked to them after the meetings, after the formal part of the meetings? A. Yes, sir.

Q. At any time have any of those dealers told you that they had been threatened in anyway by the Texas Company to the effect that their lease might be cancelled or that they would be treated badly in some other way— A. (interposing) No.

Q. (continuing)—if they didn't handle some or all of the Firestone or Goodrich line? A. No.

Q. Nothing like that has ever been told to you or suggested to you? A. No.

Q. In addition to the service station business, you also have a recapping business, do you? A. Yes, sir.

Q. And that is a General Tire type of recapping; is that correct? A. Yes, sir.

Q. And the Texas Company knows that you conduct that? (5830) A. Oh, yes.

Q. That is conducted right on your own property back of the station, is it not? A. Right.

Q. When I asked you whether it was a General recapping, I meant the trade name "General Tire Recapping". Did you mean that, too? A. That's right.

F. H. Worsham, for Respondents—Cross

Cross examination by Mr. Dias:

Q. Is that General Tire or is that a Grenada tire shop?
A. I moved recently. It is Doc's Tire Shop now.

Q. Not General? That isn't the name of it? A. I sell General tires. No, it isn't the name.

Q. I think the record is getting confused. You are not talking about the brand "General Tire", are you? You mean general in respect to all types of tires? A. General Tire.

Q. Is that title— A. (interposing) That is the title of the tire.

Q. That is the trade name? A. The trade name.

Q. And that is the one that you sell in the tire shop, is that it? A. Yes. And service station, too.

(5831) Q. That is, the General Tire? A. That's right.

Q. Do you do any other kind of business in that tire store? A. No.

Q. Did I understand that you did recapping? A. Recapping, yes.

Q. You do recapping and sell the General Tire? A. That's right.

Q. And did you say that you own the property back of this station where the tire business is located? A. Yes.

Q. Who owns the property where the station is located?
A. Mr. Knox Pierce, consignee.

Q. Is he any relative of yours? A. No, sir.

Q. At these dealer meetings you say that there are about 20 or 25 who attend in the spring and eight who attend the regular meeting. At any of these meetings have you seen Texaco or Firestone salesmen? Have they been there? A. Yes, sir.

Q. In your conversations with the other dealers, I got the impression that you didn't know too many of them personally; is that correct? A. I know some.

F. H. Worsham, for Respondents—Cross

Q. You know some? (5832) A. Yes.

Q. Would you say a few? A. Yes, sir.

Q. The answer is yes? A. Yes.

Q. How many Texaco stations are in Grenada? A. Four, including mine.

Q. Is there a Firestone retail outlet located anywhere near you? A. No, sir.

Q. Is there one in town? A. No, sir.

Q. How about Goodrich; is there a Goodrich retail outlet? A. Yes, sir.

Q. Where is that located? A. About two doors from my service station.

Q. What type of outlet is that? A. That is retail.

Q. It is a B. F. Goodrich store? A. A store.

Q. In addition to the Goodrich decal, don't you also have a large Goodrich tire sign near your building? A. No, sir.

Q. You do not? A. No, sir.

(5833) Q. How long has that been, do you know? A. I never have had a large Goodrich sign.

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Q. Did you say or were you asked whether or not you carried any Firestone accessories? A. No, sir.

Q. You do not? A. No, sir.

Q. No radiator cleaner? A. No, sir.

Q. Sidewall cleaner? A. No, sir.

Q. And you are quite sure that you have never had a Goodrich tire sign near the building now or at any time recently? A. No, sir. I didn't.

Q. Is there any significance in that that you didn't? Is it possible somebody else may have had one there? (5834)

A. I think there is a sign in the intersection of No. 8 and 51. 444 used to be a Goodrich dealer years ago and the

F. H. Worsham, for Respondents—Redirect

sign still remains there, but I don't have anything to do with that.

Q. How close is that to your place? A. It adjoins my lot.

Q. Just about how far away from your station is it in a matter of feet? Can you give us an idea? A. About 75 or a hundred feet.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. I want to get this sign situation straightened out. You say there used to be a Goodrich dealer near your lot, adjoining your lot? A. It is a billboard near there.

Q. It is a bill— A. (interposing) It doesn't have anything to do with mine.

Q. It is a Goodrich billboard? A. That's right.

Q. And it has nothing to do with your operation at all? A. That's right.

Q. You don't pay for it or maintain it? A. No, sir.

Q. You have nothing whatever to do with it? A. No, sir.

(5835) Q. It isn't on your land? A. No, sir.

Q. You were asked about whether there is a Goodrich store near you. Is that a store from which you pick up your Goodrich tires? A. That's right.

Q. And your General tires you pick up where? A. One hundred miles away—Memphis.

Q. I don't think there was any confusion but I think you told Mr. Dias, as you told me, that you stock General tires in your station as well as in your recapping plant? A. I display them there. I keep most of my stock in the recapping plant.

Q. But you have a display in your station? A. Yes, sir.

F. H. Worsham, for Respondents—Recross

Kenneth Heth, for Respondents—Direct

Q. You told me out in front of your station? A. Yes, sir.

Q. In your recapping do you use the General—what do you call it, Camelback? A. Some, yes, sir.

Q. They have a peculiar tread design on it which is peculiar to General? A. I have an independent tread. I just buy their rubber.

Q. You just buy their rubber? A. Yes, sir.

(5836) Mr. Lorenzen: That is all.

Recross examination by Mr. Dias:

Q. Do you do any Goodrich recapping? A. No, sir.

Q. You do not? A. No, sir.

. . .

(5837) KENNETH HETH was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you please state your full name to the reporter?
A. My name is Kenneth Heth.

Q. Where do you live? A. I live at 2846 Burlington, Dallas, Texas.

Q. Are you in the service station business? A. Yes, sir.

Q. Where is the location of your station? A. 3800 West Davis, Dallas, Texas.

Q. Do you sell Texaco gasoline there? A. Yes, sir.

Q. Do you have a lease from the Texas Company? A. Yes, sir.

Q. About what is the gallonage at your station? A. About 25,000 gallons a month.

Kenneth Heth, for Respondents—Direct

Q. Is the lease which you have one of those which renews itself each year? A. Yes, sir.

Q. Do you handle TBA at that station? (5838) A. Yes, sir.

Q. Will you tell us why you handle it? A. For a profit.

Q. Is that your own decision? A. Yes, sir.

Q. Tell me, have you had an understanding of the Texas Company's TBA policy while you have been a lessee? A. Say that again, please, sir.

Q. Have you had an understanding of the Texas Company's TBA policy while you have been a lessee? A. Yes, sir.

Q. What has been that understanding? A. I knew that they recommended Firestone and Goodrich products.

Q. What was your understanding as to whether you had to buy the Firestone or Goodrich line? A. Even though I knew that they recommended those lines, I also knew that I didn't have to buy them; that I could buy my merchandise from whom I pleased, and I had.

Q. Was that made clear to you from the beginning? A. I beg your pardon?

Q. Was that made clear to you from the beginning? A. Yes, sir; it was.

Q. By the way, how long have you been in that station? A. It will be eight years this fall.

(5839) Q. At the time when you took over that station, what kind of batteries were in there? A. They were Continental batteries.

Q. When you signed the lease, did the Texas Company tell you that you would have to put those Continental batteries out of there? A. No, sir.

Q. Tell us, did you attempt to sell those Continental batteries to your customers? A. Yes, sir.

Q. Did you try to build up the business? A. I did, sir.

Kenneth Heth, for Respondents—Direct

Q. Did you succeed? A. No, sir; I couldn't.

Q. And what finally happened about those Continental batteries? A. The Continental battery representative came one day and took them out and he told me that he was taking them out—they were in their on consignment—he told me that he was taking them out because I wasn't selling enough batteries to justify leaving them there.

Q. Did you ask him to take them out? A. No, sir.

Q. He came in on his own hook and took them out?
A. Yes, sir.

(5840) Q. Then after he did that, what did you do about batteries? A. I ordered a stock of Firestone batteries.

Q. What success have you had in connection with those batteries? A. Very good success. I built up a real good battery business.

Q. Some time after you had built this business up did the Continental Battery Company get in touch with you again? A. Yes, sir. I can't recall just how far back it has been, but there was a representative came to call on me and I didn't do any business with him whatsoever.

Q. That was after you had built your business up again? A. That's right, sir.

Q. What about your battery situation now? Do you handle only Firestone? A. I handle some Delco and I also sell some Willard.

Q. As well as the Firestone? A. Yes, sir.

Q. At any time, either when you had the Continental batteries or now that you have the Willards or the Delco's in addition to the Firestone, has any representative of the Texas Company told you that they might cancel your lease or treat you badly in some other way if you didn't stop handling those batteries? A. No, sir.

(5841) Q. Do you buy some of your accessories from Firestone? A. I do.

Kenneth Heth, for Respondents—Direct

Q. Do you buy some of your tires from Firestone? A. I do.

Q. In fact you buy all your stocking tires from Firestone now, do you not? A. That's right.

Q. Since you have been a lessee have you handled any other kind of tires in that station? A. Yes, sir; I have. I at one time carried a stock of Gates' tires. And I have sold quite a number of Goodyear tires.

Q. What was your success with that stock of Gates' tires as far as selling them to your customers? A. Well, it wasn't a success. I had a hard time selling them. They didn't have enough public acceptance in that area.

Q. Will you tell me the reason why you handle the Firestone tire now? A. I might say that I have been in the automobile service business all my life, and that has been a long time now, and I handle them because I feel like they are the best tire that is made, the best tire that you can buy.

Q. Is that the reason you handle them? A. Yes, sir.

Q. Do you handle them because you think if you don't handle (5842) them the Texas Company might cancel your lease? A. No, sir.

Q. How long have you been in the automobile business? A. Forty years.

Q. At one time did you order some tires from the Meggs Tire Company? A. Yes, sir.

Q. What kind of tires were those? A. They were Diamond tires.

Q. Did he deliver them to you? A. No, sir; they were unable to make delivery. I ordered quite a stock of them and they were unable to make the delivery.

Q. Do you display the Delco batteries which you have in stock, openly? A. Yes, sir.

Q. In your office? A. Yes, sir.

Kenneth Heth, for Respondents—Direct

Q. What about fan belts; what kind of fan belts do you have? A. My regular stock that I carry the most of is Firestone, but I do have some Gates and all my air conditioning belts that I sell—and I sell quite a lot of air conditioning belts—are Gates.

Q. Do you display those openly? (5843) A. Yes, sir.

Q. You make no effort to hide them? A. No, sir.

Q. About how many of your tires do you think you sell out of stock, and how many do you sell on a pick-up basis? A. I would say about 50 percent.

Q. But you have quite a large stock of tires even so, don't you? A. Yes, sir. I carry a stock of about 60 tires at all times.

Q. Nevertheless, about half of your sales are on a pick-up basis? A. That's right, sir.

Q. Do you buy—in addition to Firestone, let me have the name of some of the houses from which you buy accessories. A. I believe that I buy most of my accessories other than from Firestone, of which the most of them come from Cliff Texas Automotive—

Q. That is not related to the Texas Company? A. Not at all. They are independent jobbers.

Q. Do I understand your answer correctly, you had a couple of "mosts" in there. Do you mean that you buy more accessories outside of the Firestone line than you buy in it? A. I do.

Q. Then you said that most of those accessories which you (5844) buy outside of the Firestone line you get from Cliff Automotive? A. From two suppliers there: From Cliff Automotive and Texas Automotive, and I also buy considerable from Hargett Electric Company. I buy my Delco batteries from Hargett Electric Company.

Q. Do you buy anything from Brownlee Automotive? A. They are out of business at this time, sir.

Kenneth Heth, for Respondents—Direct

Q. You did used to buy quite substantially from them?

A. Yes, sir; I did.

Q. Do you buy anything from Beard and Stone Electric Company? A. Yes, sir; I do.

Q. Anything from Johnson Automotive? A. I used to buy quite a bit from Johnson Automotive, but I don't buy very much any more.

Q. Has that anything to do with the Texas Company influencing you not to buy from them? A. No, sir.

Q. It is your own business reasons? A. Yes, sir.

Q. What was your reason for stopping your dealings with Johnson Automotive? A. My wife keeps my books, and I have always taken a lot of pride in being able to pay my bills by the 10th of the (5845) month. I try to do that religiously. Somehow, some way, my wife failed to mail them a check so that their bill, their account, would be paid by the 10th of the month. She misplaced their invoice or something happened that they didn't get paid. And when the 15th of the month came they wrote me a very nasty letter and because of that I ceased doing business with them and I only buy from them when it is something that I just can't get anywhere else.

(5846) Q. What do you find about the acceptance among your customers of Firestone tires as a brand? A. It has, in my way of thinking, perfect acceptance. Any time that I have a customer come along that is in the market for a tire or a battery, I have no trouble whatsoever of selling them a Firestone tire or a Firestone battery.

Q. Tell me, do you have any number of customers ask you by brand name for Firestone tires? A. I do.

Q. Of your customers, how many do you think ask you for them that way? A. I would say 99 percent.

Q. Do you mean they ask specifically for the Firestone tire? A. That is right, sir.

Kenneth Heth, for Respondents—Direct

Q. Would you feel free to change to any other kind of tires if you found that popular acceptance fell off and you could make more money with some other tires? A. Yes, sir.

Q. No doubt about that in your mind? A. No, sir.

Q. You don't think the Texas Company would cancel your lease or treat you badly in other ways if you did so? A. No, sir.

Q. Do you get any help from the Texas Company in marketing your TBA? (5847) A. The only help I get is through the dealer meetings.

Q. And what kind of help do you get from those meetings? A. They show training films on driveway selling and lubrication bay selling, which is helpful—which has been helpful.

Q. You are pretty much an old timer at this business and don't need much help; is that right? A. I feel that way about it, sir.

Q. About how many dealers attend these dealer meetings? A. They are held in a series of, I believe, four days in a week, and of course there are just a certain number of dealers go each day, or certain days. The days that I go I would say there are about 125 or 150.

Q. Are those meetings held in Dallas? A. That is right, sir.

Q. At those meetings has anyone from the Texas Company ever suggested to anyone that their lease might be cancelled or that they would be treated badly in some other way if they didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Nothing like that has ever happened? A. No, sir.

Q. Do you get acquainted with the other dealers at those meetings? A. Yes, sir.

Q. Do you talk with them? (5848) A. Yes, sir.

Kenneth Heth, for Respondents—Cross

Q. At those meetings is there a lot of gossip that goes around, like what we call "scuttlebutt"? A. Oh, there naturally is visiting going on. But I don't remember there was anything in particular. Just sort of general.

Q. Let me ask you this: At any time have you heard, whether in the course of this visiting or in the course of any specific conversation, that the Texas Company had threatened any dealer with lease cancellation or with any other mean kind of treatment if they didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

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(5849) *Cross-examination by Mr. Dias:*

Q. At these meetings do you tell these dealers your personal problems? A. No, sir.

Q. These get-togethers after the meetings are just social gatherings, and that is about all? A. That's right, sir.

Q. You stock about 60 Firestone tires; and you say that constitutes about 50 percent of your tire sales, out of stock, and the other 50 percent of sales are on a pick-up basis? A. That's right, sir.

Q. In that pick-up business do you often pick up sizes of Firestone tires that you don't have in stock? A. Well, of course, when I replenish my stock it is a variety of sizes and types of tires, that's right; when I replenish my stock. But when I pick up it is a specific sale that I have made, like a set of tires, or maybe two tires like I don't have in stock, or something like that.

Q. And generally speaking, those are Firestone, are they not? A. That's right.

Q. Can you give us some idea of your dollar volume of TBA sales? A. At this time it is running about \$1800 a month.

Kenneth Heth, for Respondents—Cross

(5850) Q. You say, "at this time." Is that an increase or decrease, or what is the situation? A. It is an increase, a big increase.

Q. Over what? This time last year? A. Even this time last year or just a few months back.

Q. Is there any reason for that? Is this the heavy buying season for tires? A. Well, it is, yes; that's right. But my business as a whole is better than it was a year ago.

Q. Can you give us an average monthly TBA sales figure rather than the high point right now? A. I would say \$1200.

Q. Twelve hundred dollars would be a good average over the year? A. Yes, sir.

Q. Of that \$1200 worth of sales, can you give us some idea of the volume done in sales of Firestone tires? A. Well, of course the most of it would be in Firestone tires and batteries. The most of it.

Q. What would "most" represent? 80 percent or 90 percent? A. If we were hitting an average of \$1200 a month I would say about \$900 a month would be in tires and batteries.

Q. You carry Firestone filters, do you not? A. Yes, sir.

Q. Isn't that the next biggest selling item among the (5851) accessories field? A. I carry several brands of filters, and I would say my filters are quite an item. I carry AC filters, Fram filters, and Firestone filters. I sell more AC filters and Fram filters than I do Firestone because I cater to regular equipment as much as I can.

Q. Where do you obtain your AC filters? A. I buy most of my filters from Cliff Automotive.

Q. Does that include the Fram, too? A. Yes, sir.

Q. And Firestone, of course, you buy at Firestone? A. That's right.

Kenneth Heth, for Respondents—Cross

Q. Your Firestone store is your supply point, is it not?
A. That's right, sir, for Firestone products.

Q. As to the filter business, can you give us some idea of the volume of your filter business? A. No, sir, I wouldn't attempt to, without some books to refer to because it would be just a guess if I did, and it would be inaccurate.

Q. Does Firestone have air conditioner belts? A. I believe they did, but I might say I don't like their air conditioner belts.

Q. But their regular belts you do like? A. Yes, sir.

Q. And that is your regular line in the fan belt, the (5852) Firestone fan belt is your regular line? A. Yes, sir. I have more Firestone fan belts than I do anything else. But I do have some Gates' belts.

Q. Can you give us any idea of the volume of your sales of the Firestone fan belts? A. Oh, I don't do a big business in belts. It would be a guess as to what I did. I would really rather not because it would be a guess and not accurate.

Q. On that occasion when you ordered tires from Meggs, can you recall when that was? A. It was during the Korean War when tires were hard to get.

(5853) Q. When you first moved into the station and found those Continental batteries, how—I don't believe we established this: When did you move into the station? A. It was in the fall of 1950.

Q. What kind of tires were there at that time? A. Well, there weren't many tires at all. There was a very small stock of tires, but there were Firestone tires in there. I think there were only five.

Q. And then, you found this large consignment of Continental batteries there, is that correct? A. Well, I knew they were there when I bought the station.

Kenneth Heth, for Respondents—Cross

Q. I say they were there when you did? A. Yes.

Q. How many batteries were there, do you recall? A. I would say approximately ten.

Q. What was the name of the gentleman you bought this station from? A. Ed Goodwin.

Q. What sort of accessories were in the station? A. There was a very small stock. I would say in general it wasn't anything particular. It was very small and very poor stock.

Q. How long did you carry the Continental batteries, or try to sell those ten Continental batteries? A. I would say about approximately five or six months.

(5854) Q. And you didn't sell any in that time? A. Oh, yes, I sold some, but not good. Not to amount to anything.

Q. I think one of the reasons you like Firestone is because of the public acceptance, national advertising, and that sort of thing; is that right? A. Well, no. I just like Firestone. As I testified before, I have been in the business all my life and I have sold and serviced and been around Firestone a long time. I think they are the finest tire that is made and I really feel that way.

Q. What about batteries; do you feel the same way about their battery? A. Yes, sir.

Q. And you always have? A. Yes, sir. They have a very good adjustment policy on them if we should have any trouble with them.

Q. After that five or six months—when you moved into the station and you had those five Firestone tires, did you order an additional stock of Firestone? A. Yes, sir. I put in a stock of Firestone tires right away.

Q. That was how many? About the 60 that you usually carry? A. No. At first I didn't buy that many. I would say—it would be not accurate—but I would say possibly 30.

Kenneth Heth, for Respondents—Recross

Charles W. Moore, for Respondents—Direct

Q. Did you take on a line of Firestone accessories, too?

A. Well, I took on a line of accessories. I bought at (5855) various places. I didn't particularly buy Firestone accessories. I just bought Firestone one place and then another until I did stock the station up with a pretty good stock of accessories.

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(5857) *Recross examination by Mr. Dias:*

Q. On that \$1,200 figure, and \$900 for the tires and so on, are they cost figures or sales figures? A. Cost figures.

Q. Would you mind giving us your sales figures on that? A. I can't give that to you. I don't know. If I had my books here, I could. I might tell you that I go more by what I pay for them. I know how much my bills run every month and about how much I have to pay for them.

Q. Just so that we have the same type of figures to consider in each instance, the \$1,800 high that you mentioned is a cost figure? A. That's right, sir.

Q. Just as the \$1,200 average is a cost figure? A. That's right.

Q. And the \$900 sales figure is a cost figure? A. That's right.

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(5858) CHARLES W. MOORE was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name to the reporter, please?

A. Charles W. Moore.

Q. Where do you live? A. Dallas, Texas.

Charles W. Moore, for Respondents—Direct

Q. That town is big enough so that you had better give us a street number and name. A. 1623 Taft Street.

Q. You are not in the service station business now, are you? A. No, sir.

Q. Some other type of filling station? (5859) A. Yes, sir.

Q. I am just being facetious. You are in the liquor business now? A. Yes, sir.

Q. It is not connected with the Texas Company at all? A. No, sir.

Q. For what years were you in the service station business? A. From the spring of '50 to December '56.

Q. Did your departure from the Texas Company have anything to do with TBA? A. No, sir.

Q. It was your own choice to get out of the business? A. Yes, sir.

Q. While you were in the station, did you handle TBA? A. Yes, sir.

Q. And during that time did you have an understanding as to the TBA policy of the Texas Company? A. Yes, sir.

Q. What did you understand it to be? A. Well, the policy was to handle Firestone or Goodrich. They suggested one or the other.

Q. What was your understanding as to whether it was necessary for you to handle the Firestone or Goodrich line in order to get your lease or to stay in that station? A. No, sir.

(5860) Q. You understood you didn't have to? A. I didn't have to handle anything that I didn't want to handle.

Q. And you are sure that was your understanding? A. Yes, sir.

Q. No doubt about that? A. That's right.

Charles W. Moore, for Respondents—Direct

Q. Before you were in that service station did you have any experience with the product of any tire company? A. Yes, sir.

Q. Tell us about that. A. Well, I always bought Firestone tires and batteries for the equipment that I had anything to do with, with the pipe line department.

Q. And you had to do with buying? A. Yes, sir. Quite a bit of it.

Q. That pipe line was the Texas Pipe Line Company? A. Yes, sir.

Q. For how many years were you with that company? A. A little over 19 years.

Q. And during that time, during how much of that time did you use this Firestone equipment? A. All the time.

Q. What did you decide about it, whether it was good or bad or indifferent? (5861) A. Well, it was good. Excellent.

Q. Was that your own decision? A. Yes, sir.

Q. Based on your own experience? A. Yes, sir.

Q. Did that have anything to do with the type of tires and batteries which you handled at your service station, that experience that you had? A. Yes, sir.

Q. While you were in that station did you have much of a stock of either tires or batteries? A. No, sir.

Q. About how many Firestones did you stock there? A. I would say eight.

Q. And about how many batteries? A. About six.

Q. In addition to those Firestones which you stocked, did you sell and handle other lines of tires and batteries? A. Yes, sir.

Q. About how many of your tires did you sell out of stock and about how many were on a pick-up basis? A. Most of them were on a pick-up basis.

Q. And did you pick up whatever type of tires the customer wanted? A. Yes, sir.

Charles W. Moore, for Respondents—Direct

(5862) Q. Generals? A. Yes, sir.

Q. Any other kind that he wanted? A. Yes, sir.

Q. When you picked those tires up, did you ever have them sitting openly in your store, or did you hide them and slip them out of your station fast? A. I displayed them.

Q. So that anybody could see them? A. Yes, sir.

Q. Including anybody from the Texas Company? A. Yes, sir.

Q. And no one ever told you to hide them or not to display them? A. No, sir.

Q. Did anyone from the Texas Company ever tell you if you didn't stick to the Firestone line that your lease would be cancelled or that you would be treated badly in some other way? A. No, sir.

Q. That never happened to you the whole time you were there? A. No, sir.

Q. How about accessories; will you tell me the kind of fanbelts that you had? A. Gates and Thermoid and Firestone.

Q. Will you tell me whether or not you displayed all of the (5863) types of fanbelts which you had? A. Yes, sir.

Q. With the identification on the fanbelts? A. Yes, sir.

Q. So that anybody could see it was a Gates or a Thermoid? A. Yes, sir.

Q. And you were not afraid that someone from the Texas Company would cancel your lease or treat you badly in some way if you displayed those Thermoid and Gates? A. No, sir.

Q. During the time you were a lessee, did you feel free to go into any kind of TBA that you thought was best for your operation? A. Yes, sir.

Q. And if you wanted to stock something other than Firestone, would you have felt free to do so?

Charles W. Moore, for Respondents—Direct

The Witness: Yes, sir.

. . .

Q. Was it your own decision that you decided the Firestone tires and batteries would be best for your business?

A. Yes, sir.

Q. Was that decision brought about by any fear that you had (5864) that the Texas Company wouldn't give you the lease or would cancel your lease if you didn't handle the Firestone? A. No, sir.

Q. It was entirely your own decision? A. Yes, sir.

Q. Did you buy some of your TBA items from Johnson Automotive? A. Yes, sir.

Q. You bought some from Skelly Automotive? A. Yes, sir.

Really, it is Cliff Automotive.

Mr. Dias: Instead of what?

The Witness: Skelly.

(5865) *By Mr. Lorenzen:*

Q. Did you get any help from the Texas Company in connection with selling your TBA? A. Yes, sir.

Q. What sort of help did you get? A. Through meetings. They had meetings. And through the salesman calling on you.

Q. You say you got help at those meetings? A. Yes, sir.

Q. Did they have movies? A. Yes, sir.

Q. And other displays of TBA? A. Yes, sir.

Q. And did that display have the Firestone name or the Goodrich name on it? A. Yes, sir.

Q. About what was the gallonage of your station? Can you remember? A. It would be a guess. 12,000.

Q. Approximately on the average, a month? A. Yes, sir.

Charles W. Moore, for Respondents—Direct

Q. During the time that you were in that station were you satisfied with the delivery and service given you by the Firestone supply point? A. Yes, sir.

(5866) Q. And the price deal that you had with them? A. Yes, sir.

Q. In addition to attending these dealer meetings did you use the Texas S-75 follow-up system in connection with your customers? A. Yes, sir.

Q. And did you find that helpful? A. Yes, sir.

Q. That is the system that is useful in connection with TBA sales, is it not? A. Yes, sir.

Q. How many of these dealer meetings did you attend, would you say? A. Ninety percent of them.

Q. About how many were held? A. Well, there were four, I guess, a year. Between that I don't know how many. I mean, you know, four main ones.

Q. There were some other ones, too? A. Yes.

Q. You think you attended about ninety percent of them? A. Yes, sir.

Q. Did you get acquainted with dealers at those meetings? A. Yes, sir.

Q. Did you talk to them after the meetings? A. Yes, sir.

(5867) Q. About how many dealers attended the four main meetings? A. I would say over a hundred.

Q. And a smaller number at the other meetings? A. Yes, sir.

Q. At any time at any of those meetings did anyone from the Texas Company suggest that your lease or the lease of any other dealer might be cancelled or that you would be treated badly in any other way if you didn't handle the Firestone or Goodrich line? A. No, sir.

Q. Or part of that line? A. No, sir.

Q. Did any dealer ever tell you at any time that the Texas Company had suggested to him that his lease might

Charles W. Moore, for Respondents—Cross

be cancelled or that he would be treated badly in some other way if he didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. While you were in that station what did you find about whether there was any popular demand for Continental batteries? A. There wasn't any popular demand of Continental batteries.

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Cross examination by Mr. Dias:

Q. When you say "no popular demand," you mean nobody asked for them? (5868) A. No one.

Q. Sir? A. No one.

Q. Ever asked you? A. Asked me.

Q. The popularity was restricted to your station rather than the general popularity of the City of Dallas; is that correct? A. Sure.

Q. At these dealer meetings, can you explain those business meetings? What happened at the business part of the meeting? A. Well, they ran a film.

Q. Was there any lecture of any sort? A. Yes, sir.

Q. Who usually gave that? A. Well, the salesman probably gave it.

Q. Texaco salesman? A. Yes, sir.

Q. Did you ever hear a Firestone or Goodrich man speak at those things? A. No, sir.

Q. Never did. And they were never at those meetings? A. I have seen them.

Q. Firestone and Goodrich men? A. Yes.

Q. I think the question was asked—what other displays of (5869) TBA were there? I think there may have been a little confusion. Did you ever see any other brands of TBA other than Firestone or Goodrich on display at those meetings? A. No, sir.

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Charles W. Moore, for Respondents—Cross

(5871) Q. Do you recall what you purchased from Johnson Automotive? A. Well, fan belts and hose, some tubes.

Q. Is that about all? A. Pick-ups of parts, when you are making repairs and stuff of that sort.

Q. Other than tools and repair parts, what did you buy from them, in addition to those items that you have mentioned? A. Zerex antifreeze,

Q. Was that on a pick-up basis, also, or did they deliver? A. They had a salesman.

Q. You dealt with him regularly? A. Well, he came by once a week.

Q. Did you place an order with him generally once a week, or how often? A. I don't know how often. I have bought things from him.

Q. Can you give us any idea of the volume of your purchases from Johnson? A. It was small.

Q. What is small—one dollar, five dollars, or ten dollars? A. I don't remember any figures.

Q. What do you consider small? A. Well, just pick-ups and things of that sort. And when I ordered my antifreeze I ordered antifreeze from him.

Q. These tires that you picked up for customers, were they (5872) generally mounted on the cars for them and drove off with them? A. No, sir.

Q. They were not? A. No, sir.

Q. What was the occasion? A. When we ordered a set of tires, maybe they would stay there two or three days. I had customers across the street, you know. Sun Oil Company customers.

Q. And they would order tires? Sun Oil? A. Yes, sir. They don't have any outlet.

Q. They would order tires and a couple of days later come back and pick them up and you would put them on for them? A. Yes.

Orville L. Jernigan, for Respondents—Direct

Q. Do you have any relation by blood or marriage working for the Texas Company right now? A. No, sir.

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(5873) ORVILLE L. JERNIGAN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Jernigan, will you give your full name to the reporter, please? A. Orville L. Jernigan, 9518 Micheal Lane, Dallas, Texas.

Q. You are in the service station business now? A. Yes, sir.

Q. Where is your station located? A. 800 South Ervay.

Q. About what is the gallonage of your station? A. Approximately 30,000 gallons per month.

Q. How long have you been there? A. Approximately five years.

Q. When you first started in that station, did you have a lease from the Texas Company? A. Yes, sir.

Q. And now your lease is no longer from the Texas Company? A. No, sir.

Q. Did you handle TBA there during the whole time? A. Yes, sir.

(5874) Q. During that time did you have an understanding as to the TBA policy of the Texas Company? A. Yes, sir.

Q. What has been that understanding? A. At the time I went in business the Texas Company recommended Firestone or B. F. Goodrich, and that I could handle anything that I so desired.

Q. Did you understand clearly that you could handle anything you wanted? A. Yes, sir.

Orville L. Jernigan, for Respondents—Direct

Q. Did you handle TBA? A. Yes, sir.

Q. And was that your own choice? A. Yes, sir.

Q. Why did you handle it? A. Because the Texas Company salesman recommended it.

Q. And did you find the recommendation to have been a good one? A. Yes, sir.

Q. How about the type of TBA you handled there; was it mostly all Firestone? A. Yes, sir.

Q. Will you tell us why you started to handle Firestone when you got into that station? A. When I got into the station the Texas Company salesman (5875) recommended Firestone and B. F. Goodrich and I didn't know much about either one and I just had in this stock that I bought from the other dealer about \$50 or \$60 worth of old truck tubes there. I asked the Firestone man if he would give me credit on it if I would take Firestone, and he did.

Q. So you followed the recommendation of the Texas Company salesman? A. Yes, sir.

Q. And how did you find it to be from a business point of view? A. Profitable.

Q. You have continued with Firestone ever since? A. Yes, sir.

Q. Tell me, when you had this station under lease from the Texas Company, did you handle any batteries other than the Firestone's? A. Yes, sir.

Q. What kind? A. Champion batteries.

Q. What sort of an experience did you have with those? A. Champion batteries I took on consignment. And after about six months I began to sell quite a few. But a little later on I was adjusting more batteries than I was selling.

Q. That means you had bad batteries, that came back, and you had to make an adjustment on them? (5876) A. That's right. Yes, sir.

Orville L. Jernigan, for Respondents—Direct

Q. Was that the reason you gave it up? A. Yes, sir.

Q. Was there any other reason, such as that you didn't think you ought to handle it because the Texas Company wouldn't like it? A. No, sir.

Q. It was your own business decision? A. Yes, sir.

Q. Both to take them on and then to discontinue them?
A. Yes, sir.

Q. During the time you were in that station, did the Continental Battery Company make any effort to sell you Continental batteries? A. Quite a few times.

Q. Did you have a salesman who kept after you? A. Yes, sir.

Q. Did you want to handle the Continental batteries?
A. No, sir.

Q. What did you do to discourage the salesman? A. I told him I had to handle Firestone batteries.

Q. Was there any basis in fact for that statement? A. Just to get rid of him.

Q. Did you think that you had to handle Firestone, because the Texas Company wouldn't like it if you didn't? (5877) A. No, sir.

Q. The only reason you made that statement was to get rid of him? A. Yes, sir.

(5878) Q. As a matter of fact, at the time when you made that statement, Mr. Jernigan, you knew that the underlying lease on this property was owned by your father-in-law, didn't you? A. Yes, sir.

Q. And it was the type of lease that your father-in-law could have cancelled at the end of any year? A. Yes, sir.

Q. Ultimately, your father-in-law did cancel the lease and you took it over; is that correct? A. It expired.

Q. The lease expired? A. Yes, sir.

Q. And then, you took it over? A. Yes, sir.

Q. That was after you had been in the station for two years? A. Yes, sir.

Orville L. Jernigan, for Respondents—Direct

Q. Now, I understand that your only relation with the Texas Company is a supply contract? A. Yes, sir.

Q. They supply you with Texaco gasoline? A. Yes, sir.

Q. Has there been any change whatever in your TBA buying habits as between the time when you were a lessee and when you became a contract dealer of the Texas Company? A. No, sir.

(5879) Q. None whatever? A. No, sir.

Q. How about Firestone? Do you still handle it as much and to the same extent as you handled it when you were a lessee? A. More so.

Q. You handle more Firestone now than you did before? A. Yes, sir.

Q. Have you found it to be a profitable item to you? A. Yes, sir.

Q. And you have been satisfied with the Firestone deal? A. Yes, sir.

Q. The deliveries, the adjustments? A. Yes, sir.

Q. And the quality? A. Yes, sir.

Q. Your station is located in downtown Dallas, is it? A. Yes, sir.

Q. Do you find that there is a difference between that type of station and the neighborhood type of station?

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(5880) The Witness: Yes, sir.

By Mr. Lorenzen:

Q. With respect to TBA, what do you find the difference to be? A. They look for a national brand.

Q. That is, where you do not have the personal contact with your customers, they look for a national brand? A. Yes, sir.

Q. Is that one of the reasons that you are handling Firestone? A. Yes, sir.

Orville L. Jernigan, for Respondents—Direct

Q. Does your Firestone salesman call on you often?
A. Yes, sir.

Q. How often? A. Normally, twice a week.

Q. In addition to Firestone, while you were a lessee and now that you are a contract dealer, did you buy accessories from some source other than Firestone? A. Yes, sir.

Q. What were your principal sources for accessories other than Firestone? A. Gates Auto Supply, Auto Appliance.

Q. Those are two companies,—one is Gates and the other is Auto? A. That's right.

(5881) Q. What sort of fan belts did you handle while you were a lessee and that you handle now? A. Gates.

Q. Both before and after— A. (interposing) Yes, sir.

Q. (continuing) —you became a lessee and stopped being a lessee, did you display those openly? A. Yes, sir.

Q. Has there been any change whatever with respect to your policy with respect to your display of TBA merchandise— A. (interposing) No, sir.

Q. (continuing) —both before and after you were a lessee? A. No, sir.

Q. I think that should be before and after you were a contract dealer. I got the sequence backwards. A. No, sir.

Q. Are you bothered with a lot of salesmen who come in and try to sell you merchandise? A. Yes, sir.

Q. And it takes some time and some excuses to get rid of them? A. Yes, sir.

Q. Do you stock any batteries other than dry charge?
A. No, sir.

Q. By the way, you said that you were new in the business when you took over this station. Did you have an acquaintance (5882) with a Firestone or Goodrich sales-

Orville L. Jernigan, for Respondents—Direct

man or supply point before you leased the station from the Texas Company? A. No, sir.

Q. Did the Texas Company do anything about introducing you to the salesmen from those companies? A. At the time I leased my station, he did.

Q. They introduced you to both of them? A. As I remember rightly, it was just Firestone.

Q. Was that your selection? A. The station was Firestone before I came there, yes, sir.

Q. And then, you say that you accepted the recommendation for Firestone? A. Yes, sir.

Q. And you asked to be introduced? A. Yes, sir.

Q. And the introduction was made by your Texaco salesman? A. Yes, sir.

Q. Do you get any help from the Texas Company in marketing your TBA? A. Yes, sir.

Q. What sort of help? A. Well, my dealers help me display my merchandise.

Q. Do you mean the salesmen? A. Yes, sir. And we have spring and fall meetings.

Q. About how many people attend those meetings? (5883) A. Over a hundred.

Q. Do you still attend the meetings? A. Yes, sir.

Q. In the course of those meetings at any time has anyone from the Texas Company made any suggestion that any dealer's lease would be cancelled if he didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Did you become acquainted with some of the other dealers? A. Yes, sir.

Q. Are you acquainted with them? A. Yes, sir.

Q. Did you talk with them at the meetings? A. Yes, sir.

John McGahey, for Respondents—Direct

Q. Have any of them ever told you that it had been suggested to them by the Texas Company that their lease might be cancelled or that they would be treated badly in some other way— A. (interposing) No, sir.

Q. (continuing) —if they didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Nothing like that has ever happened, or nothing like that has ever been told to you? A. No, sir.

. . .

(5884) Q. When you had those Champion batteries, they were openly displayed? A. Yes, sir.

Q. They had a sign? A. A curb sign, yes.

Q. Out in front of the station? A. Yes, sir.

Q. No one from the Texas Company ever told you that you had to take that sign down? A. No, sir.

Q. You said that your business is expanding in Firestone. Are you going into the muffler and tail pipe business with (5885) Firestone? A. Yes, sir.

Q. That Firestone supply point is very close to you, isn't it? A. Approximately 12 blocks, I would say.

Q. Twelve blocks? A. Yes, sir.

Mr. Lorenzen: That is all.

. . .

(5886) JOHN MC GAHEY was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name to the reporter, please?
A. John McGahey.

Q. Where do you live? A. 1506 Ash Street, Grand Prairie, Texas.

John McGahey, for Respondents—Direct

Q. Is that town a suburb of Dallas? A. Well, we don't like to think so. It is pretty close.

Q. How far away from Dallas are you? A. About 12 miles.

Q. Is your station located in that town? A. Yes, sir. 802 East Main.

Q. That is a service station? A. Yes, sir.

Q. Do you sell Texaco gasoline? A. Yes, sir.

Q. Do you have a lease there? (5887) A. Yes, sir.

Q. It is one of those leases which renews itself each year? A. Yes, sir.

Q. For how long have you been a lessee at that location? A. Eight years.

Q. Before that time were you a lessee of the Texas Company at another location? A. Yes, sir.

Q. What was that location? A. 217 West Main.

Mr. Dias: Grand Prairie?

The Witness: Yes, sir.

By Mr. Lorenzen:

Q. In that station at 217 West Main, what kind of batteries did you handle? A. Well, I handled Excell.

Q. What sort of tires did you handle? A. Firestone.

Q. Tell us how you came to buy the Firestone tires in that station. A. Well, a friend of mine operated a Firestone store just a couple of blocks down the street from me.

Q. Did you go to that friend to buy those tires without the Texas Company having anything to do with it? A. I think I did, yes, sir.

(5888) Q. Did you continue to handle those Excell batteries in the station at 217 West Main right up until you got another station? A. Yes, sir.

Q. Then, when you obtained this other station, was that a better station than you had before? A. Yes, sir.

John McGahey, for Respondents—Direct

Q. Did the Texas Company know you were handling those Excell batteries? A. Yes, sir.

Q. Did they tell you you would have to stop handling those batteries in order to get that new station? A. No, sir.

Q. What about the batteries when you went to the new station? A. I moved them with me.

Q. You moved the Excell batteries to the new station with you? A. Yes, sir.

Q. Did the Texas Company tell you that you had to get them out of there, or anything like that? A. No, sir.

Q. Do you still have some Excell batteries at your station? A. Yes, sir. Still handle them.

Q. About half your stock? A. Yes, sir. Approximately half of it.

Q. Tell me, are those a cheaper line of battery? A. Yes, sir.

(5889) Q. What is your premium line of battery? A. Firestone.

Q. Do you find those satisfactory? A. Yes, sir.

Q. Do you handle those because you think they are the best battery for your business? A. I certainly do.

Q. Have you continued to handle the Firestone tires which you first bought through this friend of yours? A. Yes, sir.

Q. Have you been satisfied with those? A. Yes, sir.

Q. Is that your own choice to handle those Firestone tires? A. It is the best tire made, I think.

Q. And you had the best experience with it? A. I certainly have.

Q. You are satisfied with it from the point of view of price and service? A. A hundred percent.

Q. And customer acceptance? A. That's right.

Q. In addition to those Excell batteries have you handled Willard batteries? A. No, sir. I never handled any

John McGahey, for Respondents—Direct

Willard batteries, other than what I bought when I bought out 217 West Main. There were (5890) some Willard batteries there.

Q. And some Southland? A. And some Southland, yes, sir.

Q. Did the Texas Company make any opposition to your buying those batteries from the dealer who was in there ahead of you? A. No, sir. I did, I bought some Southland batteries, right after I went in and sold those out the first batteries I bought were Southland.

Q. You jumped back one question. I missed one question in between. Did the Texas Company make any objection to your buying those Willard and Southland batteries from the dealer who handled them ahead of you? A. No, sir.

Q. They knew you bought them? A. They knew I bought them.

Q. You openly kept them in stock? A. Yes, sir.

Q. Then, the Firestone order for batteries that you placed after that was another order for Southland? A. Well, this truck came by, see, and I was low in batteries so I bought some Southland batteries.

Q. After that you put in the Excells, is that right? A. Yes, sir. I wasn't satisfied with Southland.

Q. Do you find this TBA which you are handling of help to you in your business? (5891) A. Yes, sir.

Q. In what way? A. To make money.

Q. To make profit on these items? A. That's right.

Q. What has been your understanding of the Texas Company's TBA policy? A. Well, when I went over to sign the lease, they told me that they recommended Firestone tires and Goodrich tires, but that I was an independent merchant as far as they were concerned and that I could handle anything that I wanted to handle.

John McGahey, for Respondents—Direct

Q. They told you all of that? A. Yes, sir.

Q. At any time since they told you that, has anyone from the Texas Company suggested to you that that isn't the policy and that, in fact, you have to buy some or all of the Firestone and Goodrich line? A. No, sir.

Q. Has anybody threatened to cancel your lease or treat you badly in some other way if you didn't stick to the Firestone line? A. No, sir.

Q. Have you felt free to buy any TBA which you thought best for you? A. Yes, sir.

(5892) Q. And is that the basis upon which you have bought? A. That's right.

Q. Let's go into your accessories for a minute. What are your principal suppliers of accessories. You buy some from the Firestone store, don't you? A. Yes, sir.

Q. From whom else do you buy? A. Grand Prairie Auto Supply.

Q. What are some of the items you get from them? A. Filters, fan belts.

Q. What kind of fan belts? A. Gates.

Q. Do you stock those? A. Yes, sir.

Q. Display them? A. Yes, sir.

Q. With the name Gates appearing? A. Yes, sir.

Q. So anybody can see it? A. Everybody. Sitting right next to my desk.

Q. How about those Excell batteries? Where are they located? A. In my office.

Q. On a stand with the name? A. On an Excell battery stand, yes.

Q. Right in your office? (5893) A. Yes, sir.

Q. Your office is the main sales room in the station? A. Yes, sir.

Q. Any others? Do you buy anything from Beard and Stone Electric Company? A. Yes, sir.

John McGahey, for Respondents—Direct

Q. What do you buy from them? A. Antifreeze, fan-belts, hoses, just various accessories.

Q. Are there some other suppliers from whom you buy some other TBA items? A. Ralph Clark Auto Supply, Beard and Stone, Texas Automotive, and I buy a lot off of the wagons that come by.

Q. Does Firestone do your recapping? A. Sir?

Q. Does Firestone do the recapping of your tires? A. I don't sell any recap tires. I haven't sold any recaps, no, sir.

Q. So you don't have any recapping done at all? A. No, sir.

Q. Have you handled Exide batteries at one time? A. Exide, I believe I did.

Q. Did you buy anything from the Green Manufacturing Company? A. Excell batteries.

Q. Those are the Excells? A. Yes, sir. Manufactured by the Green Manufacturing Company.

(5894) Q. That is the one we missed. You buy your Excell batteries from the Green Manufacturing Company? A. Yes, sir.

Q. Of all of your TBA, how do you think it is divided as between tires and tubes and batteries and accessories? Can you give us just a rough approximation? A. Yes. I sell 75 percent more accessories than I do tires and batteries.

Q. Do you mean you sell either one? A. Sir?

Q. That percentage is a little too complicated for me. Is a little more than half your business in accessories? A. Yes, sir.

Q. And then, the other half is divided between tires and tubes on the one side, and batteries on the other? A. Yes, sir. That's right.

Q. And is your business there about half and half? A. Yes, sir.

John McGahey, for Respondents—Direct

Q. About half in tires and half in batteries? A. Yes, sir.

Q. Is there a Firestone store right close to you? A. Yes, sir, within a couple of blocks.

Q. Is that where you get your supply of Firestone tires? A. Yes, sir.

Q. And Firestone batteries, such as you buy? (5895) A. Yes, sir.

Q. Do you openly display all of your TBA? A. Yes, sir.

Q. Do you make any effort to hide any of it at all? A. I don't hide anything.

Q. Has the Texas Company ever suggested to you that you ought to hide your Gates fanbelts or your Excell batteries or filters or anything of that kind? A. No, sir.

Q. Has anyone from the Texas Company ever threatened to cancel your lease or treat you badly in some other way if you didn't stop selling these Excell batteries and the Gates fanbelts? A. No, sir.

Q. Do you get any help from the Texas Company in marketing your TBA? A. Yes, sir.

Q. What sort of help do you get? A. Well, the salesman, he comes out, helps me display my merchandise, and I go to the dealers' meetings.

Q. What happens at the dealers' meetings? Do you get suggestions there? A. Yes, sir.

Q. Do they show you these movies? A. Yes, sir.

Q. And is the Goodrich and Firestone display of TBA advertisement (5896) made at those meetings? A. Yes, sir.

Q. Do they put up a sort of model display? You say there is a display? A. Yes, sir.

(5897) Q. Do you find that useful even in connection with displaying your Excell batteries and your Gates fanbelts? A. I certainly do.

John McGahey, for Respondents—Direct

Q. Do you use this S.75 follow-up system? A. Some, yes, sir.

Q. That has to do with some way of keeping track of your customers, doesn't it? A. That's right.

Q. About how many people attend your dealers' meetings? A. I would say approximately a hundred.

Q. Are those the same meetings that the Dallas people go to, or are they different meetings? A. No, they are the same ones. I go to the Dallas meetings.

Q. You are successfully connected with Dallas to go to those meetings? A. Yes, sir.

Q. About how often are those meetings held? A. Well, about three or four times a year.

Q. At that time did you become acquainted with the other dealers? A. Yes, sir.

Q. Did you talk with them? A. Yes, sir.

Q. At any time at those meetings has anybody from the Texas Company suggested to you or to any other dealer that (5898) if you didn't handle some or all of the Firestone or Goodrich line that his lease might be cancelled and he might be treated badly in some other way? A. No, sir.

Q. At those meetings, have any dealers ever told you that any such suggestion has been made to them by the Texas Company? A. No one ever told me that, and I believe if they had you would have heard it at one of those dealer meetings.

Q. You never heard anything like that? A. No, sir; never did.

Q. I am not sure, I seem to be forgetting gallonages in several of these cases. About what is the gallonage of your station now? A. About 30,000 a month.

Q. Do you handle the Firestone mufflers in your station? A. No, sir.

John McGahey, for Respondents—Cross

Q. What kind do you handle? A. I just pick mufflers up when I sell one, just pick it up. I usually buy all my mufflers from Grand Prairie Auto Supply.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. I don't believe you gave us the names of the filters that you carry? (5899) A. Well, sir, I carry Firestone, AC, and Fram. A few Purolators once in a while.

Q. I may have misunderstood. Do I understand that you carry only the Excell battery, or do you also carry Firestone? A. I also carry Firestone.

Q. You stock both those batteries? A. Yes, sir.

Q. Can you give us some idea of your stock in each? A. Yes, sir. I have approximately, I would say, 10 Firestone's and 7 or 8 Excells.

Q. You pick up more Firestones as the occasion demands? A. Yes, sir; and Excells.

Q. You lumped your TBA sales. Half of your volume is in accessories, a quarter in batteries and a quarter in tires. That quarter in tires is just almost exclusively Firestone, is it not? A. Yes, sir.

Q. And on your batteries, can you give us some idea of your dollar volume—could you give us dollar volume on TBA? A. I couldn't give you dollar volume, because I don't have my books. But I would say that I sell—I would say that I sell a little over half or more Excells than I do Firestone.

Q. In other words, a few more Excells than Firestone? A. Yes.

Q. On your filters, how do your filters break down? (5900) A. I sell more Firestone filters than I do the others, although I sell a lot of the others.

Q. Do you sell many ACs and Frams? A. Yes, sir.

John McGahey, for Respondents—Cross

Q. Will you give us the dates in that first station, 217 West Main? A. Nineteen and forty-seven.

Q. Until when? A. 1949.

Q. '47 to '49.

Had you had any experience in the service station business before you went in there at West Main? A. I was working in a station.

Q. You worked in one? A. Yes, sir.

Q. Was it a Texaco station also? A. No, sir. Sinclair.

Q. Had you handled Firestone tires at the Sinclair station? A. He handled some; yes, sir.

Q. That wasn't normal stock? A pick-up basis? A. A pick-up basis. He didn't handle too many tires of any kind. He handled a few Firestone on a pick-up basis. When he sold a tire we would run and get it.

Q. During your initial interview with the Texas official before you took over the "217" station, will you tell us again (5901) their recommendations relative to TBA? A. Yes, sir. I remember distinctly. I went over and talked to them and they told me, they said, "Mr. McGahey, we recommend Firestone and Goodrich tires and batteries", but they said, "You are an independent operator or merchant as far as we are concerned. You can handle anything you want to handle". That was brought out very clearly to me.

Q. Did they explain to you why they recommended Firestone or Goodrich? A. No, sir; they didn't explain. They said other than that it was a good piece of merchandise.

Q. After that do you recall that you had a friend in the Firestone business— A. Yes, sir.

Q. (continuing) —and you purchased from Firestone.

Your current address is 802 East Main; is that correct? A. Yes, sir.

Q. Do I understand you went in there right after you got out of 217 West Main? A. Yes, sir.

John McGahey, for Respondents—Cross

Q. And you have been there ever since? A. Yes, sir.

Q. In other words, that would be from 1950 up to date?

A. Yes, sir.

Q. At this second station you are also a lessee? (5902)

A. Yes, sir.

Q. As you were at the first station? A. Yes, sir.

Q. And neither you nor any of your relatives own the property? A. No, sir.

I wish they did.

Q. At this current station, are there any retail outlets of Goodrich products? A. Yes, sir. There is a Goodrich store about three blocks from me.

Q. Is it that far away from you? A. Yes, sir.

Q. Any other retailers of Goodrich products? A. No, sir; I don't believe so.

Q. How about Firestone? A. You said retail or wholesale?

Q. Retail. A. Oh, yes, there is; I believe there is another guy sells Goodrich.

Q. Might it be a Conoco? A. No, sir.

Q. You think it is what? A. I think it is Sinclair. I think he sells Goodrich. I am not positive.

(5903) Q. Where is he located in relationship to your station? A. Down the block. Down the street a couple of blocks.

Q. A couple of blocks? A. Yes, sir.

Q. The location of the Firestone store, where is that?

A. It is a couple of blocks down the street.

Q. Does that Firestone store sell any gasoline? A. Yes, sir.

Q. And what brand? A. Texaco.

Q. Are there any other Firestone outlets, retail outlets, nearby selling Firestone products? A. No, sir.

John McGahey, for Respondents—Redirect, Recross

Q. Do you know how many other stations there are, Texaco stations, in Grand Prairie? A. I can tell you sir.

Q. All right. A. There are six, I believe, sir.

. . .

(5905) Q. Do you have a credit charge in your station? A. Yes, sir.

Q. Have you ever had the experience of having a credit slip returned for having listed non-sponsored products? A. No, sir.

Q. Have you ever had any credit slip returned for any reason by the Texaco Company? A. One of my boys didn't get one signed one time. They turned it back to me.

Q. Just for signature? A. Yes.

Q. Do you deal with the transient trade very much? A. Yes, sir.

Q. Do you find that credit card a help to your business? A. Yes, sir.

. . .

(5906) *Redirect examination by Mr. Lorenzen:*

Q. Do you put all items that you sell on your credit card, that is, all gasoline and TBA? A. Yes, sir; I put everything on the credit card.

Q. Even though you sell an Excell battery or Gates fan belts? A. Yes, sir.

Mr. Lorenzen: That is all.

Recross examination by Mr. Dias:

Q. On the credit card do you list the name of the item? A. Well, there is not room.

Q. As I understand, there isn't room right now. But up until the first of the year? At that time you itemized

John McGahey, for Respondents—Resumed, Redirect

L. H. Daniel, Jr., for Respondents—Direct

everything? A. There never was much room. No, I don't. I tell you I just write down—if I sell a battery I just write down "battery." I figure if the man's credit is good, if he has a credit card he will pay his bill.

Mr. Dias: That is all.

Further redirect examination by Mr. Lorenzen:

Q. Do you follow that same practice whether it is a (5907) Firestone battery or an Excell battery? A. Yes, sir.

Q. It makes no difference? A. Yes, sir.

Q. As far as your credit card entry goes? A. That's right.

. . .

(5908) L. H. DANIEL, JR. was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Daniel, will you give your name to the reporter please, and tell him where you live. A. My name is L. H. Daniel, Jr., and I live in Greenville, Texas.

Q. Just so that I don't call you by a nickname, but in order to tie you in with something in the testimony here, you are sometimes referred to as "Dan Daniel"? A. That is right.

Q. Mr. Daniel, what is your business now? A. I am consignee of the Texas Company in Greenville, and also market Firestone merchandise.

Q. Will you tell me what percent of the Firestone merchandise that you market is sold to stations handling

L. H. Daniel, Jr., for Respondents—Direct

Texaco gasoline? A. In Greenville? Or in general now? Are you including all retailers?

Q. Let's take all. A. I would say that approximately ten per cent of our tire volume goes to Texaco outlets.

(5909) Q. And the other ninety percent of your Firestone is sold elsewhere? A. Elsewhere, right.

Q. Do you have any outside business or income aside from what you get out of your business as a Texaco consignee? A. Yes, we do have outside income.

Q. And in addition to what you have as a Firestone dealer? A. That is right.

Q. Mr. Daniel, were you a Texas Company consignee at a time when a Mr. Fagg Sanford was a dealer who had a lease from the Texas Company? A. It will take a second to clarify that. During that particular period my brother and I were in a partnership there. The consignee-ship was in his name at that time. It is in mine now.

Q. You were in partnership at this particular location with your brother? A. That is right. As a matter of fact, he was on leave of absence at that time.

Q. But you were the Dan Daniel who would be at the bulk plant in Greenville? A. That is correct.

Q. There was nobody else by that name? A. No.

Q. You did know that Mr. Fagg Sanford had a lease there for (5910) a couple of years? A. That is right, I did.

Q. And you, as consignee, supplied him with his Texaco gasoline? A. That is right.

Q. Do you know about when this was? A. It would be difficult for me to pinpoint the date. That is probably in the record.

Q. Would November 1953 to November 1955 sound approximately like it? A. That is about right as to the period.

L. H. Daniel, Jr., for Respondents—Direct

Q. Mr. Sanford testified in this case that he didn't get any complaints about his keeping his station in a clean and healthful condition for the first six months he was there, but that after the six months some kind of complaints were made to him about that, among other things. Do you recall what the situation is about that operation? A. During the initial period of most any dealer there is a time of orientation, and probably there was not any serious complaint during that period. I would assume that he would be acquainted with the operation after that period, and know more of the things that are needful in his business. After that time, of course, we were interested in him becoming a better dealer, and there were efforts made to acquaint him with the proper way to run the business.

Q. By the way, you people own the property and lease to several (5911) of the dealers to whom you furnish the Texaco gasoline, don't you? A. That is right. Approximately seven or eight.

Q. But in this particular situation the Texas Company owned the leasehold? A. That is correct.

Q. So all you did was sell the man whatever he bought from you? A. That is correct.

Q. At the end of the first year of his operation—Mr. Sanford's operation—did you make any recommendation as to whether or not you would like to see his lease renewed? A. Well, at that time we were not particularly approached on the thing. At that time it was our feeling it would have been better to seek another dealer. It didn't appear to us that he was doing a very good job. However, the Company saw fit to renew his lease for another year. His station was dirty, and that sort of thing.

Q. Did your dissatisfaction with Mr. Sanford at that time have anything to do with the fact that he handled some Continental batteries? A. No, sir, it had nothing at all to do with that. Nothing whatsoever.

L. H. Daniel, Jr., for Respondents—Direct

Q. Were you in the battery business at that time to any extent? A. Very slightly. Very slightly. The big majority of our (5912) business is tire business. The revenue from the battery business is of no consequence.

Q. Relatively speaking, if Mr. Sanford had bought his batteries from you, about what would have been the proportion between that and the income that you got from selling him gasoline?

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The Witness: Had we sold Sanford all of the batteries, we might have made perhaps a few dollars a year profit. Gasoline we might have made \$150 a month, perhaps \$200, in that range.

By Mr. Lorenzen:

Q. A month? A. Yes, sir.

Q. And in batteries you would have made just a few dollars a year? A. Just a few dollars a year.

Q. During the time when Mr. Sanford was in there, in addition to the condition in which he kept this property, which he leased, did you have any other difficulties with him? A. Yes, sir, we did. It is mandatory in our operation that you collect when you deliver the gasoline, and he frequently gives a check that proved to be hot. On many occasions the check would come from the bank marked "insufficient funds." (5913) It is difficult to conduct a business that you can't be sure that you are receiving real money for your merchandise.

Q. Was there any discussion between you and Mr. Sanford about the switch of gasoline from one sort of a pump to another? A. Yes, sir. We discussed that with him. It was quite distressing to us because we are quite proud of our gasolines and he admitted transferring some 700 gal-

L. H. Daniel, Jr., for Respondents—Direct

lons of lower-grade gasoline into a tank which contained high-grade gasoline. And his position is, in my opinion, indefensible because he has a huge storage compared to his volume. We deliver to him at his convenience. He of course claimed that he ran out on the weekend and transferred that 700 gallons. Of course he made the additional profit because he sold it at the higher price.

Q. Did you recommend ultimately that Mr. Sanford's lease be cancelled? A. At the end of the first year that was our thinking, and it was strengthened at the end of the second year—our feeling.

Q. Was there any factor in addition to the ones that you have talked about which concerned you at the time you made the recommendation to cancel at the end of the second year? A. Well, it was our feeling that he kept a very dirty establishment. He might keep a brush for rest room cleaning purposes in the front office. I don't mean occasionally but habitually. We touched on that to try to get him to improve it. We naturally tried to get his business on a going basis by trying to (5914) encourage him in various ways. We tried to strengthen him financially. We consigned him tires, even, in order to help him make a go of the thing. But he wasn't in good shape financially during the entire period and I think he progressively became worse toward the end of his stay.

Q. Was there any change in highway location contemplated which had anything to do with your recommendation? A. There was a very profound change in the highway there. Like many smaller towns, it has been by-passed by the highway. That was the problem uppermost in our minds, how to do adequately with a station with a dealer who gave us hot checks, as this change in highways approached, and that of course was very strongly in our thinking as we tried to upgrade our organization toward the end of his tenure.

L. H. Daniel, Jr., for Respondents—Direct

Q. Was your recommendation that the lease be cancelled influenced in any way whatever by the fact that Mr. Sanford handled some Continental batteries? A. It certainly was not affected in any manner.

Q. Mr. Sanford testified at Page 610 and 1594 that the only threat that was ever made to him was in the summer of 1955 at a meeting at the bulk plant in Greenville, at which Mr. Dan Daniel and Mr. Swan were present. Mr. Swan, so Mr. Sanford testified, more or less insisted that he, Sanford, handle Firestone batteries. Now I am quoting: "He (Swan) told me that I would either handle Firestone or not to expect any (5915) contract to be renewed."

Mr. Daniel, I want to know whether a statement like that, in words or in substance, was made at that time or at any other time to Mr. Sanford at your bulk plant and in your presence. A. No, sir, there was no statement made at that time. I greeted Mr. Sanford when he came in; I was with him during his entire visit. I bid him adieu when he left. There was no statement made like that or at any other time. In fact, I would say there was no statement made like that by anybody.

Q. To that effect or in substance? A. That is correct.

Mr. Dias: In your presence?

The Witness: That is right, in my presence.

By Mr. Lorenzen:

Q. Would you say that that testimony, insofar as it says that that statement was made in your presence, is not accurate? A. That is correct. It is not accurate.

Q. It is not the truth? A. It just didn't take place. That is all.

Q. While you were a consignee, Mr. Daniel, what was your understanding as to the Texas Company's TBA pol-

L. H. Daniel, Jr., for Respondents—Cross

icy? A. My understanding of the policy is this, sir: That the Company often recommends, the Texas Company often recommends Firestone or Goodrich as being a means of a dealer making additional profit. They are both nationally-known lines. On no (5916) occasion have I seen them do other than suggest that course. We have found it a good course. It has been profitable for us.

Q. Did you know whether or not a dealer, to keep his lease with the Texas Company, had to carry either the Firestone or the Goodrich line or some of it? A. No, sir, they certainly didn't. We had other dealers who carried other lines of tires. It is not mandatory at all.

Q. And you knew that at the time that Mr. Fagg Sanford was a dealer? A. Yes, sir.

Q. And at the time that you recommended the cancellation of his lease? A. That is right.

Cross examination by Mr. Dias:

Q. Mr. Daniel, can you give us the address of Mr. Sanford's station? A. It is at Lee and Wright Streets.

Q. Has that station changed hands? Who took the station after Sanford left? A. I believe Mr. Thompson replaced Mr. Sanford.

Q. How long did he stay? Or is he still there? (5917)
A. He was there less than a year.

Q. Do you know why he left? A. He went back into the aircraft business, I believe, with Temco. It was a voluntary thing. I don't recall the details specifically. It was voluntary.

Q. Can you give us roughly some idea of his tenure there, the length of time? From 1955 or early 1956, was it? A. I believe the dates were established a while ago.

L. H. Daniel, Jr., for Respondents—Cross

Q. 1953 to 1955. Now I would like to know about Mr. Thompson. A. Less than a year from the day that Sanford checked out. I don't recall the precise dates. I would say months—three or four months, I would say.

Q. In other words, from the time Sanford checked out this new man Thompson came in and stayed there for a matter of months? A. I believe that is correct.

(5918) Q. Who was the next dealer in there? That would bring us into roughly the middle of 1956, wouldn't it? A. I can't recall the next dealer. I believe we had a number of stations, and we had a number of dealer changes. Scott, I believe, Floyd Scott, followed Mr. Thompson.

Q. And from the middle of '56 until when, or is he still there? A. If I am correct, if there were no intervening dealers, Scott was there in the vicinity of two years.

Q. Is he still there? A. No, sir, he is not there. We now have another dealer there.

Q. He went out—Scott went out this year, is that correct? A. I gave you an answer, sir, that Mr. Scott was there approximately two years. It may have been 18 months. But we now have a dealer who has been there about five months. So, we can date back from the present time approximately five months. I don't commit those dates to memory.

Q. Scott from 1956 to early '58? A. That's right.

Q. And now, you have who? A. Tommy J. Massey.

Q. He is still there? A. He is.

Q. Have each of these dealers carried Firestone tires? Do (5919) they get their Firestone tires from you? A. Not exclusively. The present dealer has acquired some Firestone tires elsewhere.

Q. How about Scott and Tommy? Do you recall their buying habits? A. They bought their Firestone from us, as far as I know.

L. H. Daniel, Jr., for Respondents—Cross

Q. And batteries? A. The Firestone batteries they acquired came from us. However, there were other batteries sold by Mr. Scott. I don't recall the brands, however.

Q. In connection with that conversation that Mr. Lorenzen spoke to you about, Mr. Swan or Mr. Sanford were always in your presence at that bulk plant, were they? A. Yes, sir.

Q. During the entire course of their visit? A. That is correct.

Q. And you heard a part of the conversation? A. Yes, sir.

Q. You weren't just working over at your desk in one corner of the room while they were discussing this? A. They have a small office and there were three chairs, and they were arranged conference fashion.

Q. Did they arrive at your office together? A. As I recall, Sanford was by me. He came separately. There may have been a pre-arrangement between Swan and Sanford. (5920) There may have been, but they did not arrive together, as I recall.

Q. Is that a common occurrence, to summon dealers into your bulk plant? A. Often when we have a matter to discuss with the dealer we will go to the station. There we have customers coming in. If it is needful to visit with them with any degree of quiet, they come to our place because we won't have interruptions of customers coming in.

Q. Can you give us more information about the transfer of lower grade gas into the higher grade tank that you mentioned before?

First, tell us how do you go about transferring gas from one tank into another. How can the station operator do that? A. The station operator had a couple of extra lengths of hose and he attached them in series to his Fire Chief pump, that is the lower grade gasoline pump, and

L. H. Daniel, Jr., for Respondents—Cross

then put the discharge nozzle into the fill pipe of the higher grade gasoline, the Sky Chief gasoline.

Q. A station operator has that equipment with him in the station? A. That's right. This one did. He asserted that he did.

Q. Was that transfer of gas occasioned by a leaking tank? A. The transfer, as I recall, was occasioned by the dealer (5921) being negligent in not buying enough gasoline to carry him over the weekend.

Q. Then, you recall nothing about a leaking tank on his premises? A. There was a leaking tank. That was separate.

Q. There was something else? A. That is something else.

Q. Can you tell us about that? A. Mr. Sanford didn't keep a very good set of records and that country has corrosive soil, and you have to keep records on your tanks in order to know if an underground leak occurs. And the underground leak occurred without the dealer knowing it because he kept no records, and finally the gasoline seeped underground and came up a block away. One of the neighbors complained. Then, the dealer realized that he had gas leakage. At that time, when the tank was established to be leaking, it was necessary that we withdraw the gasoline from the tank.

Q. Isn't that the occasion that the gas was withdrawn from one and put into the other? A. No, sir. He did that on more than one occasion when he would run out of gasoline over the weekend. He had mammoth storage; in other words, he had enough storage to run him for two weeks. Normally, we are closed Sundays. And he did not buy enough gasoline to run him from noon Saturday to Monday. And he would run out of gasoline, and he would hook his hose (5922) together and transfer the Fire Chief in

L. H. Daniel, Jr., for Respondents—Cross

to the Sky Chief tank, because he did not have enough gas to run over the weekend.

Q. How close to your station is your station to the bulk plant? A. About a mile.

Q. What would be the difficulty in asking you to deliver some gasoline? A. We would be glad to deliver gasoline to him.

Q. Had he asked you for gas and you didn't deliver it, had that occurred? A. No, sir, he had never asked for gasoline and did not receive delivery.

We may have taken a hot check from him when we did deliver, but we always did deliver.

Q. On these hot checks, have you ever been stuck for the money? A. No, sir. He, in all instances, paid. In other words, when it was established the check was hot, he would make coverage at the bank or pick it up himself.

Q. So that you actually lost no money to him, did you? A. Pardon?

Q. You lost no money to Sanford? A. Not on hot checks.

Q. In any other way? A. No. In no manner.

Q. Did you tell us that ten percent of your tire volume goes (5923) to Texaco stations, and 90 percent elsewhere? A. That's correct. That is essentially correct. And that is your overall sales. I understood that to mean all areas where you operate.

I would say that in Greenville perhaps six percent of our total TBA volume goes to Texaco outlets. We furnish Texaco outlets in other consignee's areas, which might bring the figure up to ten percent.

Q. You don't operate only in Greenville? A. No, sir. We operate in a rather wide area.

Q. Can you give us some idea of your area? A. Oh, we might ship tires to Houston, which would be two to

L. H. Daniel, Jr., for Respondents—Cross

three hundred miles, or the area which we service, which we deliver merchandise to a service station, probably would not be greater than 75 or a hundred as a standard thing. But on many occasions we have shipped tires to other points.

Q. And you would ship tires to Houston, would you?
A. Oh, yes.

(5924) Q. Was that leaking gas tank ever fixed for Sanford? A. Yes, sir, it was fixed.

Q. After how many calls and how many complaints had he made to you? A. As soon as the problem came to our attention we saw to it that it was handled. We are extremely sensitive on that point in our country because of long years of experience. In other words, as I mentioned earlier, the soil is corrosive and no amount of precaution will prevent tanks from rotting out. We habitually advise each incoming dealer to carefully check his product, because of that reason. Naturally, we are alert to any word that leakage is occurring.

Q. Who is it that fixed the tank? Did you fix the tank, your company? A. The Texas Company.

Q. The Texas Company? A. Yes. In other words, we engaged a man to fix it for the Texas Company. He removed the tank and put in a new one.

Q. The complaint was first made to you and then you reported that to the Texas Company, is that it? A. It is very likely that I engaged a man to repair that myself.

Q. Did you repair the tank or replace it? A. Replaced it. I used the wrong term. Replaced it.

Q. How long did it take to get a new tank down there?
(5925) A. A matter of a day or so. The tanks are in Dallas. We called Dallas and they shipped the tank.

L. H. Daniel, Jr., for Respondents—Redirect

Charles B. Swann, for Respondents—Direct

Redirect examination by Mr. Lorenzen:

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Q. The problem which you envisioned when you recommended the cancellation of Sanford with this new highway in fact took place, didn't it? A. The highway did change, yes.

Q. And cut off the station? A. That is right.

(5926) Q. And that happened within a month or so after the termination of Mr. Sanford's lease? A. That is correct.

Q. You were explaining this business of pumping gasoline from one tank to another. The pump which is used in that process is the regular pump which is on the island? A. That is correct, the one normally used to deliver gasoline to customers' cars.

Q. He just attached a hose to the nozzle and ran it into the intake of the other tank? A. That is correct.

Q. The territory in which you supply Texaco gasoline to dealers is much less than the territory over which you sell your Firestone product; is that right? A. That is correct.

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(5927) CHARLES B. SWANN, was called as a witness and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and address to the court reporter, please? A. Charles B. Swann, 2812 Huntley Drive, Oklahoma City.

Q. You are now employed by the Texas Company? A. Yes, sir.

Charles B. Swann, for Respondents—Direct

Q. In what capacity? A. District sales representative.

Q. About where is your district located? A. North Central Oklahoma.

Q. Before that, you were also employed by the Texas Company? A. Yes, sir.

Q. In what capacity? A. As zone manager headquartering in Greenville, Texas.

Q. That is the city in which there was a dealer by the name (5928) of C. Fagg Sanford? A. Yes, sir.

Q. When you met Sanford for the first time, were you zone manager down there? A. No, sir.

Q. What was your position when you first met him? A. Actually, the very first time I met him I was dealer training representative. I think I probably met him twice in that capacity, and then worked with him later on as a dealer service representative.

Q. When you talked with him at the station which he operated in Greenville, your capacity was dealer service representative? A. Yes, sir; that's right.

Q. And you were the zone manager in this zone in which his station was located at the time when his lease was not renewed? A. That's right, sir.

Q. Was it your recommendation that the lease be not renewed? A. It was.

Q. Will you tell us the basis for your decision to recommend against the renewal of his lease? A. Well, Mr. Sanford had proved to be somewhat of a marginal dealer. In fact, he was probably a business failure. About 30 to 50 percent of his business was going to be lost due to a highway change, and if he was a failure before the highway change, I was pretty sure he would be afterwards. It was a (5929) matter of either not renewing his lease or him going broke, because there wasn't any question in my mind but what he would go bankrupt if he stayed there in the station after the highway changed.

Charles B. Swann, for Respondents—Direct

Q. Tell us some of the things that you knew about Mr. C. Fagg Sanford which led to your conclusion that he was a business failure. A. Well, his financial position definitely was strained. He definitely did give several checks of insufficient funds for petroleum funds.

Apparently, his operating capital continued to decrease as long as he stayed in there. In other words, he was taking more out of the station than the station was making each month.

Q. That is what led to your conclusion that you would have a bankrupt dealer on your hands if he stayed in there?

A. He was on the verge of bankruptcy when he left.

Q. At the time when you recommended the cancellation of his lease, and at the time when you had your conversations with Mr. (5930) Sanford, will you tell me whether you were acquainted with the Texas Company's policy, particularly that relating to TBA, as set out in Exhibits 26, 27, and 28?

Mr. Dias: To save time I will concede that the witness will answer in the affirmative.

Mr. Lorenzen: Let him look and decide whether he knows or not.

Mr. Dias: I will stipulate that he will.

Mr. Lorenzen: Are you going to cross-examine him about it?

Mr. Dias: I don't know.

Mr. Lorenzen: Then, let's let him look.

The Witness: Yes, sir, I received each of these letters and was familiar with them.

By Mr. Lorenzen:

Q. At the time that you talked to Mr. C. Fagg Sanford and recommended the cancellation of his lease, what was your understanding as to the Texas Company's TBA pol-

Charles B. Swann, for Respondents—Direct

icy? A. My understanding was just the same as it always had been. Briefly, that was that although the Texas Company didn't sell TBA, they realized that in order for a dealer to be successful and realize his full profit that he should merchandise that merchandise along with his petroleum products. The Texas Company recommended both Firestone and Goodrich as being good lines of merchandise with good acceptance, and that we always (5931) made it a policy to notify the dealer that he was an independent businessman and could choose the brand of TBA that he so desired.

Q. Did you have in mind specifically the reference in that 1948 letter that any employee of the Texas Company who did not respect that independence of the Texas dealer would subject himself to immediate discharge? A. Do you mean Mr. Hochuli's letter?

Q. Yes. A. I sure do remember it.

Q. You knew about it at that time and you still remember it? A. Yes, sir.

Q. Was your recommendation that Mr. Sanford's lease be cancelled based in any way upon the fact that he handled some Continental batteries? A. That is ridiculous. Of course not.

Q. It had nothing to do with it? A. Oh, absolutely nothing.

Q. In the summer of 1955 it is testified to here by Mr. C. Fagg Sanford that you and he and Mr. Dan Daniel had a meeting at the bulk plant in Greenville, and at that time you more or less insisted that he handle Firestone batteries, and I am quoting: "He told me that I would either handle Firestone or not to expect my contract to be renewed."

Did you tell him anything like that in effect or (5932) substance? A. No, sir. No, sir.

Charles B. Swann, for Respondents—Direct

Q. And you didn't use those exact words, did you? A. I didn't use—I didn't even imply that.

Q. And to that extent the testimony of Mr. Sanford is just inaccurate? A. He is.

Q. At the time when you recommended the cancellation of this lease, there were other Texaco—there were other dealers who had leases from the Texas Company in your zone, were there not? A. Oh, yes.

Q. Did any of them handle tires and batteries other than Firestone and Goodrich? A. Oh, yes.

Q. How many of them? Quite a few? A. I didn't have many leased stations. I expect about half of them handled other than Firestone and Goodrich.

Q. Did you recommend that any of them be cancelled because of their failure to handle Firestone and Goodrich? A. Oh, of course not.

Q. Did they stay on as dealers as far as you were concerned? A. Certainly.

Q. Mr. Sanford also testified that when he came to sell his station you asked him to dispose of those batteries before he (5933) sold his station, and by "those batteries" he means the Continental batteries he had there. Did you tell him anything like that? A. No, there was some discussion about it.

Q. Tell us what it was. A. I can't—as I recall this is what happened: The incoming dealer told me that he didn't want to buy them from Mr. Sanford; that he didn't want to handle that kind of batteries. I may have told Mr. Sanford that the incoming man told me that. I don't recall.

As I recall, the batteries were there when the change was made, and they probably were returned to the battery company for credit to Mr. Sanford's account. However, I can't say for sure on that because I wasn't there at the time that happened.

Charles B. Swann, for Respondents—Cross

Q. Do you know what line pricewise or qualitywise those particular Continental batteries were? A. They were the cheapest made. \$7.95 retail price.

Q. Is that a kind of a poor quality battery? A. Well, about the poorest you can get, I imagine.

Q. In this district in which you manage now, do you have any leased stations under you? A. Oh, yes.

(5934) Q. What about the proportion there? Are some of those who don't handle Firestone or Goodrich tires or batteries? A. Oh, yes.

Q. What is the proportion? A. I would say about half of them don't handle Firestone or Goodrich.

Q. The half that do handle it, do they handle Firestone and Goodrich exclusively? A. I don't think I have a single dealer that handles Firestone or Goodrich exclusively.

Q. Have you recommended that any of those dealers be cancelled out because they don't handle the Firestone or Goodrich line? A. I sure haven't.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. Mr. Swann, is it your testimony that in your current area half do not handle Goodrich or Firestone exclusively? What about the other half? Do they handle non-sponsored exclusively? Is that your testimony? A. No, I wouldn't say that they handle non-sponsored exclusively. Probably buy and sell some Firestone or Goodrich. I just don't know.

(5935) Q. Will you tell us what you said about the half that handle Goodrich or Firestone. A. I don't even recall exactly what I said, but about half of my leased stations in my area at the present time handle some Firestone or Goodrich.

Charles B. Swann, for Respondents—Cross

Q. Then as to the other half, is it your testimony that they do not handle any Goodrich or Firestone? A. If they handle any it is negligible. It is just so small I don't know about it if they did.

Q. How strong do these others handle the Goodrich and Firestone lines? A. They stock some of them.

Q. They stock some? A. Yes.

Q. On this \$7.95 Continental battery, you said that is the poorest quality. Did you mean poorest quality or cheapest battery, which? A. I don't propose to be a judge of quality of batteries. I know it is the cheapest price.

Q. In other words, you are not a battery expert, are you? (5936) A. No, sir.

Q. I think you also said that you didn't handle many leased stations when you were in Greenville. Is that in the Greenville area? A. I didn't have many leased stations in my area, no, sir.

Q. How many did you have, do you recall? A. Probably nine or ten. I don't recall exactly.

Q. Does that indicate that the other half handled Goodrich or Firestone exclusively? A. In my Greenville area I don't recall of a single dealer who handled either Firestone or Goodrich exclusively, no, sir.

Q. Of those, of the other half that were not handling Goodrich or Firestone, did they refrain from Goodrich or Firestone exclusively, or did they, too, buy some? A. They could have bought some. In fact, I am sure they may have bought some. I frankly just don't know.

Q. When did that highway go through—as I understand it, it took up Sanford's old station, is that right? A. No, sir. The highway was rerouted from in front of his station.

Q. So you lost the business—the business was taken away from that area? A. Yes, sir.

Charles B. Swann, for Respondents—Cross

Charles Eubanks, for Respondents—Direct

Q. When did that occur? A. That occurred approximately one or two weeks before Mr. (5937) Sanford left the station.

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Q. You talked to Sanford on numerous occasions, did you? A. When?

Q. While you were in Greenville and while he was operating the station. A. Oh, yes.

Q. How often did you say you called on him? A. Mr. Sanford did the service work on the Company car assigned to me, and I expect I probably visited his station at least once a week on an average.

Q. Do you recall a conversation with Sanford in which you said to him, "When I mention something to an operator I expect it to be done"? Do you recall anything like that with him? A. No. I know that I didn't make a statement like that. I can't imagine me making such a statement.

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(Witness excused)

(5938) CHARLES EUBANKS was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Eubanks, will you give your name and home address to the reporter? A. Charles Eubanks, Santa Rosa, Texas.

Q. Are you with the service station business? A. Yes, sir.

Charles Eubanks, for Respondents—Direct

Q. What sort of gasoline do you sell? A. Texaco.

Q. About what is the gallonage of your station? A. 18,000 to 20,000.

Q. Gallons a month? A. Yes, sir.

Q. For how long have you been a lessee? A. For approximately 9½ years.

Q. So you got in there sometime in 1948? A. '48.

Q. Is this station you are in now, physically the same station in which you started? A. No, sir. They completely tore the old one down and rebuilt the new one in 1953. I opened the new one January 1, 1954.

(5939) Q. At both stations did you handle TBA? A. Yes, sir.

Q. Why did you handle TBA? A. To make money.

Q. Is that your own choice? A. Yes, sir.

Q. During the time you were in this station, did you have an understanding as to the Texas Company's TBA policy? A. Yes, sir.

Q. What was your understanding? A. The Texas Company recommended that the dealer handle Firestone or Goodrich but that it was impressed on him that he was an independent dealer and could buy from whatever source he chose.

Q. Are you sure that was actually told you? A. That was actually told me; yes, sir.

Q. And have you acted in accordance with that policy since? A. Yes, sir.

Q. Now, let me ask you about your TBA buying.

When you first got into that station in 1948, had you been in the service station business before? A. No, sir; I was just out of college.

Q. You were just out of college? A. Yes.

Q. At that time, were you told why the Texas Company (5940) recommended the Firestone line or the Goodrich

Charles Eubanks, for Respondents—Direct

line? A. None other than it was just naturally went in good with their national advertising.

Q. Let me ask you this: After that recommendation, what sort of a line did you have in that station when you went in? A. It was Firestone merchandise.

Q. How long did you continue to handle Firestone? A. I just moved out approximately what stock he had in there and gradually replaced it with Goodrich.

Q. That is, the stock you started with was the stock that was in the station? A. Yes, sir. With Firestone.

Q. And then what was the first order that you placed? A. Goodrich.

Q. With the Goodrich Company? A. Yes, sir.

Q. Will you tell me the basis for your selecting Goodrich as the product which you ordered the first time you had a chance to make an order when you were in that station? A. Well, I didn't know too much about the business, and I had a friend whom I had known before who worked with Goodrich, and I went along with him.

Q. You bought from him? A. Yes, sir.

Q. How long did that continue? (5941) A. Until approximately 1952.

Q. Then what happened to this friend of yours who was with Goodrich? A. He was transferred—not transferred but he quit Goodrich and went to work for Goodyear.

Q. Goodyear? A. Yes, sir.

Q. And at that time, was there any change in the TBA which you bought? A. I changed over to Goodyear myself.

Q. You followed your friend to Goodyear? A. I followed my friend to Goodyear.

Q. And at that time, then, did you buy Goodyear tires? A. Yes, sir; I bought Goodyear tires ever since.

Q. How about batteries? A. I stocked Willard batteries.

Charles Eubanks, for Respondents—Direct

Q. Was that the situation as of the time when the Texas Company offered to rebuild your station and build you a new one? A. Yes, sir.

Q. You were handling Goodyear tires and you were handling Willard batteries? A. Yes, sir.

Q. As a condition to building you this new station, did the Texas Company tell you you would have to discontinue (5942) handling the Goodyear? A. No, sir.

Q. Did they tell you you would have to discontinue handling Willard batteries? A. No, sir.

Q. Did they tell you that you would have to open the new station with the Firestone or Goodrich line? A. No, sir.

Q. When you did move into the new station, what TBA product did you open? A. Goodyear.

Q. Goodyear tires? A. Yes, sir.

Q. What kind of batteries? A. Willard batteries.

Q. Did you have any Firestone or any Goodrich merchandise in stock? A. No, sir.

Q. Not any? A. None whatsoever.

Q. Have you continued ever since that time to handle the Goodyear line? A. Yes, sir.

Q. And Willard batteries? A. Yes, sir.

(5943) Q. And no Firestone and no Goodrich? A. No Firestone and no Goodrich.

Q. In addition to the Goodyear Tire and Rubber Company, will you tell us who your suppliers of accessories are? A. Straus-Frank.

Q. Is that company a Firestone or Goodrich supply point? A. No, sir.

Q. Any other company? A. I buy a little bit from some smaller companies. Grindle Sales and Barrera Auto Supplies.

Q. Do you display all of your Goodyear merchandise openly? A. Yes, sir.

Charles Eubanks, for Respondents—Direct

Q. And all of the other merchandise, too? A. Yes, sir.

Q. Do you have Goodyear signs? A. Yes, sir.

Q. And what about the Willard batteries; are they openly displayed? A. Yes, sir.

Q. Your Texas Company salesman and the district manager know all about it? A. They know everything.

Q. Have they, at any time, indicated to you that they might cancel your lease or look upon you with disfavor if you didn't stop handling this Goodyear line and this Willard line? (5944) A. No, sir.

Q. Or if you didn't stop buying these accessories from Straus-Frank? A. That's right.

Q. Nothing like that has ever happened to you? A. Nothing like that was ever mentioned.

Q. Do you find in this particular neighborhood this tire has had popular acceptance? A. Yes, sir.

Q. Is that one reason you handle it? A. My tire volume doubled when I switched from Goodrich to Goodyear.

Q. You do substantial business in tires, don't you? A. Yes, sir; I do.

Q. A very large business? A. Well, it is fairly large for a service station.

Q. In your situation it is more than your battery and accessories business combined? A. Yes, sir. It is approximately 60 percent.

Q. About how much a month do you figure your total TBA business come to at best to you? A. Approximately \$2500.

Q. A month? A. Yes, sir.

Q. Do you attend the Texas Company dealer meetings? (5945) A. Yes, sir.

Q. At that time, was there any discussion about TBA? A. Yes, sir; there was discussion of selling points.

Charles Eubanks, for Respondents—Direct

Mr. Dias: Sir?

The Witness: Discussion of salesmanship on TBA, on the drive and in the lube base.

By Mr. Lorenzen:

Q. Do you find that is helpful to you? A. Yes, sir; very helpful.

Q. And you can use that in the sale even of your Good-year and Willard? A. Yes, sir.

Q. And the other accessories? A. That's right.

Q. About how many dealers attend those meetings? A. In my area there is never over 10 and 12.

Q. Do you get to know those fairly well? A. Fairly well.

Q. Do you get to talk to them after the meetings? A. Some; yes, sir.

Q. Do you attend any larger meetings? Are there any annual meetings held somewhere where you go? A. The last few years they have changed it to a breakfast meeting, one-time a year, at which time any new products are introduced or—it used to be a spring meeting, at which time (5946) we would have a banquet. But now they have changed that to a breakfast meeting.

Q. Do more people attend now? A. No.

Q. It is still in the same location? A. Yes.

Q. And still the same sized meeting? A. Yes.

Q. At any time at that meeting, has any one from the Texas Company suggested to anyone that the lease might be cancelled or that they would be looked upon with disfavor in some other way if he didn't handle some or all of the Firestone or Goodrich line? A. Not to my knowledge; no, sir.

Q. Has any dealer at those meetings, or at any other time, told you or indicated to you that the Texas Company

Charles Eubanks, for Respondents—Cross

had suggested to him that his lease might be cancelled or that they would treat him badly in some other way if he didn't handle some or all of the Firestone or Goodrich line?

A. No, sir.

Q. Nothing like that— A. Nothing like that.

Q. (continuing)—has never come to your attention?

A. No, sir.

(5947) *Cross examination by Mr. Dias:*

Q. Mr. Eubanks, do you still have some Firestone signs around your station? A. No, sir. There are some Goodrich decals in the window.

Q. Goodrich? A. Yes, sir.

Q. Not Firestone? A. No, sir.

Q. What did you say they were? Decals? A. Yes.

Q. Are there any Goodrich retail outlets in your area? A. Not in—I am in a small town. Not in that small town. There are in our trade area. But not in the small town.

Q. Is there another service station of any brand right nearby selling Goodrich? A. I believe the Concord dealer handles some Goodrich.

Q. He is about a block away from you, isn't he? A. Yes.

Q. As a matter of fact, there are only two other gas stations in your area; isn't that right? A. That's right.

Q. Conoco is one of them? A. There is one that is closed up.

Q. Sir? (5948) A. There is one that is closed up, which would make four.

Q. It is closed? A. It is closed.

Q. Three in all, operating? A. Yes.

Q. What is the size of Santa Rosa? A. We tripled our population recently. We had a sign up of "400". Now we have one up, "1300".

Charles Eubanks, for Respondents—Cross

Q. I thought it was still 400? A. We annexed the Latin-American area of town.

Q. Do I understand that yours is the only Texaco station in town? A. Yes, sir.

Q. Can you tell me something about your business? It is a partnership, is it not? A. Yes, sir.

Q. Who makes up the partnership? A. My father and my brother.

Q. The three of you in all? A. Yes. They don't attend to the station very much. I run the station.

Q. Do they or either of them or you run the tire store that you have? A. I run the whole business.

Q. You run the tire store, too? (5949) A. Yes.

Q. In addition to the tire store, the partnership as a whole has added outside income, has it not? A. We have a little bit of rental property and we also have farming.

Q. Farming? A. Yes, sir.

Q. How about the airport? A. We lease it to a dusting service.

Q. How about the property that your station is on? Who owns that? A. The Texas Company.

Q. You don't own it yourself? A. No, sir.

Q. Is your trade mainly with the farmers in the area? A. Yes, sir. The farmers and the local people.

Q. As a matter of fact, half of your business is on a credit basis, is it not? A. Yes.

Q. That isn't the credit that goes through the Texaco Company? A. I have a good substantial amount with the Texas Company.

Q. I thought you gave them, extended credit yourself? A. I do. But I have a lot of credit-card business also.

Q. In addition to that 50 percent that you do with the (5950) farm trade? A. Yes, sir.

Q. Where is the nearest Firestone supply point? A. Do you mean by that, retail outlet?

Charles Eubanks, for Respondents—Redirect

A. L. McAnally, for Respondents—Direct

Q. The Firestone store. A. The Firestone store would be Harlingen, which would be 10 or 12 miles.

Q. And what about other retail outlets handling Firestone products? How close are they? A. There is Boggus Motor Company in Harlingen. They are a distributor.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. Where is your Goodyear supply point? A. Harlingen and San Antonio. The pick-up basis is Harlingen and the district warehouse is at San Antonio.

Q. Harlingen is the same place where you said the Goodrich supply point was? A. Firestone and Goodrich, too.

Q. Both Firestone and Goodrich? A. Yes.

Q. And Goodyear? A. Yes.

Q. Same town? (5951) A. Same town.

Q. Was there any other Goodyear retail outlet near you when you took on this Goodyear line? A. There is another dealer about six miles.

Q. Six miles away? A. Yes. He is also a Texaco dealer.

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(5952) A. L. McANALLY was called as a witness for Respondent and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Please state your full name and address to the reporter. A. A. L. McAnally, 502 West Rost, Hamilton, Texas.

Q. You are in the service station business? A. Yes, sir.

A. L. McAnally, for Respondents—Direct

Q. At what location? A. 515 North Rice Street.

Q. Hamilton, Texas? A. Hamilton, Texas.

Q. That isn't a suburb of Dallas either, is it? A. No. It is 135 miles out of Dallas.

Q. Are you on a highway? A. I have one station on a highway. Yes, both stations on the highway. One on 281 and the other on 36.

Q. Do you have a brand new station of which you are a lessee? A. Yes, sir.

Q. At those stations do you handle Texaco gasoline?
A. Sure do.

Q. And do you have leases at both stations? A. Yes.

(5953) Q. With the Texas Company? A. Yes, sir.

Q. They are the usual leases that renew themselves each year? A. Yes.

Q. When did you get into the station at 515 North Rice?
A. Last October was a year ago.

Q. That is the new one? A. Yes.

Q. Where is the old one? A. 212 North Rice. The old one is 212 North Rice.

Q. How long were you at the one at 212? A. Thirteen years.

Q. In the course of that time did you handle various kinds of TBA? A. Yes, sir, I did.

Q. Do you handle TBA at both stations now? A. Yes, sir.

Q. Are they both going now? A. Yes.

Q. Both are going now. And you handle TBA at both stations? A. Yes, both stations.

Q. Will you tell us why you are handling TBA at both stations? A. For the profit.

Q. Do you make money on the TBA? A. Yes, sir.

(5954) Q. Do you find it helps you bring in customers for your gasoline? A. It sure does.

A. L. McAnally, for Respondents—Direct

Q. During the time you have been a lessee of the Texas Company, have you had an understanding as to the TBA policy of the Texas Company? A. Yes, sir.

Q. What has that been? A. Well, they told me they sponsor Firestone and Goodrich tires, but we are independent dealers and we could handle what we wanted to.

Q. You were told that? A. Yes, sir.

Q. Have you acted on that suggestion? A. I sure have.

Q. Tell me what has been your principal line of tires in the old station? A. Most of the time I handled U. S. Royals in the old station.

Q. Did you ever handle any Goodrich or Firestone there? A. Yes, I had a few Goodrich.

Q. At one time or throughout the time? A. A couple of times.

Q. A couple of times? A. Twice.

Q. For how long a period of time? (5955) A. Well, six months one time, and just got one shipment the last time.

Q. Six months at one time and one shipment the other time? A. Yes.

Q. How long did that shipment last? A. It lasted two or three months before I got rid of it. Before I sold it all.

Q. Except for those two occasions, you didn't stock any Goodrich or any tires? A. No, sir.

Q. It was all U. S. tires? A. Yes, sir.

Q. What about batteries? A. At that time I handled U. S. batteries, too.

Q. During the same time? A. Yes.

Q. Now, we are talking about the 13 years you were in the old station? A. Yes.

Q. In 1955, before you got this new station, what sort of tires and batteries were you handling at the old one? A. I changed to Goodyear tires and Reliable batteries.

Q. Goodyear tires and what? A. Reliable batteries.

A. L. McAnally, for Respondents—Direct

Q. That is what you had in that station before you got the (5956) lease on the new station? A. Yes, sir.

Q. And the Texas Company gave you the lease on the new station? A. They sure did.

Q. Did they tell you as a condition to getting that lease that you would have to discontinue selling the Goodyear tires and Reliable batteries? A. They did not.

Q. When you opened the new station, what did you open with? A. I opened with Goodyear tires.

Q. Goodyear tires? A. Yes, sir. And Reliable batteries.

Q. And Reliable batteries? A. Yes, sir.

Q. Did the Texas Company tell you they were going to cancel the lease on that station unless you buy the Firestone and Goodrich line? A. No, sir, they did not.

Q. They never told you anything like that? A. No, sir. They told me to tell Greer to put up some decals so the windows wouldn't look so naked.

Q. Did you do that? A. Yes, sir.

Q. Has the salesman of the Texas Company ever tried to sell you on the idea of handling the Firestone and Goodrich line? (5957) A. Not in many years.

Q. You mean you discouraged him? A. Sir?

Q. You discouraged him? A. Yes, I guess I did.

Q. At one time did he try? A. Yes.

Q. But you refused to buy any of the Firestone or Goodrich? A. I sure did.

Q. Except for those two times you tried? A. That's right.

Q. Will you give us the names of some of the suppliers from whom you buy your TBA? A. Well, I buy some from the Shulcalp Company in Dallas.

Q. What do you buy from them? A. I buy seat covers and sealed beam lights, light bulbs of all kinds, all kinds of hardware and accessories.

A. L. McAnally, for Respondents—Direct

Q. Where do you buy your tires? A. I buy the tires from Goodyear.

Q. In Dallas? A. Yes, sir.

Q. And batteries? A. I buy batteries from Reliable, San Anton.

Q. Do you buy anything from the Miller Company in Waco? A. Yes. I buy oil filters and windshield wiper blades and (5958) such as that from the Miller Company in Waco.

Q. How about— A. (interposing) And from the Arch-enhold Company.

Q. Are they the people from whom you buy your main line of accessories? A. Yes, sir. I buy some from open trucks. I buy some off of the Avons Company in Evinsville.

Q. None of those are Firestone or Goodrich supply points, are they? A. No, sir.

Q. You do a pretty substantial tire business, too, don't you? A. Yes, sir.

Q. Do you sell quite a lot more tires than you do either batteries or accessories? A. Yes, sir.

Q. Do you display all of your TBA? A. Yes, sir, I sure do.

Q. Openly? A. Yes, sir.

Q. So the Texas Company knows about it? A. Yes, they know about it.

Q. And you have signs up to advertise your product? A. Yes, sure do.

Q. Has the Texas Company ever told you to take down the signs and take down the advertising? (5959) A. No, sir.

Q. Have they ever told you to discontinue handling the Goodyear line, or the Reliable battery line? A. No, sir, they have not.

Q. Have they ever threatened to cancel the leases on your station if you didn't handle some or all of the Goodrich or Firestone products? A. No, sir.

A. L. McAnally, for Respondents—Direct

Q. Do you attend dealers meetings of the Texas Company? A. Sure do,

Q. About how many do you attend? A. Well, on the average about two a year for 20 years.

Q. About how many dealers would you say are at those meetings? A. Well, it varies. When we go to Waco there are about a hundred. When we go to Lampasas or Brownwood, there are not quite so many. Lampasas would be 30 or 40. Brownwood would be about 50. You see, I have been transferred from zone to zone down there, from Waco zone back up to San Angelo and back into Waco.

Q. Do you mean there has been a reorganization in the Texas system of administration in there? A. Yes. They swapped back there.

Q. Physically, your stations are still located in the same place? A. I said in the same place. Just changing district and zone (5960) managers.

Q. At those meetings tell me do you get any information about selling TBA? A. Sure do.

Q. What sort of advice and information do you get? A. Well, they have a good film showing us how to sell on the drive, showing you how to display your stuff so it will be attractive. You have a lecture. It is good for anyone to attend.

Q. Do you find that is helpful in marketing your line of TBA? A. Sure do.

Q. At any of those meetings has anybody from the Texas Company ever suggested to you or to any other dealer in your presence that the lease on his station might be cancelled or that he would be treated badly in some other way if he didn't handle some or all of the Firestone or Goodrich line? A. No, sir, never heard of it.

Q. Nothing like that? A. No, sir.

A. L. McAnally, for Respondents—Cross

Q. Do you get to talk to any of the dealers at those meetings? A. Oh, yes. A little bit.

Q. Do you visit with them? A. Yes, sir.

Q. Talk with them quite a bit? (5961) A. Yes.

Q. Have any of those dealers ever said in your presence, or to you, that anybody from the Texas Company has ever suggested to them their lease might be cancelled or they would be treated badly in any other way— A. (interposing) No, sir.

Q. (continuing) —if they didn't handle some or all of the Firestone or Goodrich line? A. No, sir.

Q. Nothing like that has ever come to your attention? A. No, sir. Never heard it mentioned.

(5962) Q. What is the gallonage of your station? A. About 15,000. That is 515 North Rice. That is 15,000.

Q. And what is it at the other station? A. All told, at the other it will run about thirty, with our gasoline, butane, and diesel oil—LP gas.

Q. You say that is about thirty? A. It is about thirty thousand.

Q. So between the two you have about 45,000? A. That is right.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. On that last gallonage figure, 15,000 at 515 North Rice— A. Yes, sir.

Q. And 30,000 at your other station. A. Yes, sir.

Q. But that 30,000 includes butane? A. Yes. Butane and diesel.

Q. All that together comes to 30,000? A. Yes, sir.

Q. At these dealer meetings, what kind of lectures do you get? A. Well, lectures on how to take care of your busi-

A. L. McAnally, for Respondents—Cross

ness, and try to promote more business, and just something that will help you in sales and give you some new ideas.

(5963) Q. At those meetings do you see Firestone and Goodrich displays of TBA? A. Yes, sir, sure do.

. . .

(5964) Q. When did you open up Mac's Truck Town Station? A. 1951.

Q. That is the second station? A. Yes, sir.

Q. Where you sell butane and diesel and so on? A. Yes.

Q. What is the address of that? A. One mile east on 36 Highway.

Q. Is that one mile east of Hamilton? A. Yes. That is one mile east of downtown. It is still in (5965) the city limits, but that has always been our address.

Q. One mile east on Highway 36.

Do you sell any TBA at the Truck Town station? A. Yes, sir.

Q. What type TBA do you sell there? A. Tires, tubes, batteries.

Q. The same brands that you carry— A. Same brands.

Q. Goodyear and all the others that you mentioned? A. Yes, sir.

Q. You also run a restaurant there, do you not? A. Yes, sir.

Q. That is at the one mile east highway? A. Yes, sir.

Q. How many other Texaco stations are in town? A. In the city limits there are three of them.

Q. A total of three? A. Yes, sir. Three besides the two I have.

Q. You say in the city limits. Are you in the city limits? A. Yes.

Q. Do you know those other three stations? A. Yes, sir.

A. L. McAnally, for Respondents—Cross

Q. What do they sell in the line of TBA? A. Not any one of them sells anything much. J. Frank Jones gets some stuff from me, batteries, tubes, and whatnot.

(5966) Q. Are there any Firestone stores in town? A. Yes, sir. Big one.

Q. Whereabouts is that? A. It is on West Main.

Q. Is that very far from your station or either one? A. Five or six blocks.

Q. How about Goodrich? Is there a Goodrich store? A. No, there is not a store there. There is a Conoco station that handles Goodrich.

Q. You said something a little while ago about discouraging the Texaco salesman. Can you tell us about that? A. Well, I just never would buy.

Q. How did it come up that you discouraged him? A. I guess they got tired of asking me.

Q. Asking you what? A. Why didn't I handle some Goodrich and Firestone tires.

Q. When was that? A. It has been years ago.

Q. Can you tell us roughly when? A. No, I couldn't. They never bothered me bad no time.

Q. Can you tell us what it is that he said to you that made you think he was urging you to buy? A. They never did urge.

Q. They didn't? A. No.

(5967) Q. Can you tell us what he said? A. No. I have had them say a time or two, "Shorty, when are you going to handle some Goodyear or Firestone for us?" I would say, "Never."

Q. How did you discourage them? A. Just saying, "Never." They knew I meant it.

Mr. Dias: I have nothing further.

H. Helmcamp, for Respondents—Direct

(5972) H. HELMCAMP was called as a witness for Respondent and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your full name and address to the reporter, please? A. H. Helmcamp.

Q. Where do you live? A. Schulenberg, Texas.

Q. Are you in the business of selling gasoline, among other things? A. Yes, sir.

Q. What sort of gasoline do you sell? A. Texaco.

Q. For how many years have you been selling Texaco gasoline? A. Oh, it is going on 40 years.

Q. Do you have a lease now from the Texas Company? A. Yes, sir.

Q. For how long have you had the lease from the Texas Company? A. Well, ever since '40, 1940, and before that.

(5973) Q. Even before that? A. Yes, sir.

Q. Well, is this one of these leases which renews itself each year? A. How is that?

Q. Is this one of these leases which has a clause in it that it is renewed each year unless it is cancelled? A. I couldn't tell you. I never read it.

Q. How long since you have seen your lease? A. Just looked at it, that is all, and signed it.

Q. How long since you have seen your lease and even had any talk with the Texas Company about it? A. Not since 1940 that I know of.

Q. You don't own this property, do you? A. No, sir.

Q. It is leased to you by the Texas Company? A. That is right.

Q. Now, what sort of TBA do you handle there? A. Well, I handle Goodyear tires and batteries and all other TBA.

H. Helmcamp, for Respondents—Direct

Q. You say you handle Goodyear? A. Goodyear.

Q. Tires and batteries? A. Yes, sir.

Q. Do you buy any of your tires or batteries or accessories (5974) from either Firestone or Goodrich? A. No, sir.

Q. And you haven't done that ever? A. No, sir.

Q. Was there ever a time when the salesmen of the Texas Company tried to sell you on the idea of handling Firestone and Goodrich? A. Yes, sir.

Q. Do they still try? A. No, they haven't made any suggestion in a long time.

Q. Now, about what is the gallonage, gasoline gallonage at your station? A. Between 25,000 and 30,000 gallons per month.

Q. Do you do a fairly substantial TBA business there? A. Yes, sir.

Q. About what do you think the dollar volume at cost to you is of your TBA business? A. Well, I buy approximately \$40,000 worth of merchandise from Goodyear a year; that is my cost.

Q. That is your cost? A. Yes, sir.

Q. In addition you buy accessories from some other sources? A. Yes, sir.

Q. What is the name of the source from which you buy most of your accessories? (5975) A. Most of my accessories are bought from a little jobber at Moulton, Texas, Gus Fishbeck.

Q. Do you have any other supplier of accessories? A. Strauss Frank Company.

Q. San Antonio? A. San Antonio, yes, sir.

Q. At any time while you have been in this station, has anyone from the Texas Company intimated to you that if you didn't stop handling this Goodyear line and these other accessories that they might stop renewing your lease? A. No, sir.

H. Helmcamp, for Respondents—Direct

Q. Have they ever told you that he would treat you badly in some other way? A. No, sir.

Q. Do they maintain your station? A. Yes, sir.

Q. Have they offered to rebuild it for you? A. Yes, they have.

Q. Have they offered to do that? A. Yes, sir.

Q. And what did you tell them? A. I told them I couldn't use it if they rebuilt it, there wouldn't be enough room there.

Q. Is that because you wouldn't have enough space to store your tires? (5976) A. That is right, sir. We don't have the room. We have an old station and we are using the sidewalk. If we rebuild it we would have to move back and there would go my warehouse. They promised to leave it as long as I stay.

Q. And that warehouse is also something that the Texas Company built for you? A. Yes, sir.

Q. And it is covered by the lease? A. Yes, sir.

Q. What you keep in there mostly is this Goodyear product? A. That is right.

Q. You don't keep any Firestone or Goodrich in it? A. No, sir.

Q. In the last couple of years, have you suggested to the Texas Company that you would like to quit and retire? A. I sure have.

Q. And what has been the Texas Company's position on that? A. They told me that I had some good years left, just to stay there a while.

Q. Are you on the Texaco dealers council? A. Yes, sir.

Q. Do you advertise your Goodyear products? A. Yes, sir; I advertise in the newspaper and by direct mail.

Q. And do you have your name and the name "Goodyear" in that advertising? (5977) A. Yes, sir, the material is furnished by Goodyear.

H. Helmcamp, for Respondents—Cross

Q. The material is furnished by Goodyear? A. Yes, sir.

Mr. Lorenzen: That is all.

Cross examination by Mr. Dias:

Q. You have been with Texaco for 40 years? A. Practically, yes, sir.

Q. And you became a lessee in 1940? Is that correct?

A. No, I think when they acquired the station, I just don't know.

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(5979) Q. After the Texas Company bought it, then you got a lease from the Texas Company? A. Yes, sir.

Q. Up until that time you had been operating under a lease to Mr. Russek, is that correct? A. Yes, sir, operating on a monthly basis.

Q. That started in 1934? A. Somewhere in that neighborhood. I couldn't tell you exactly.

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(5980) Q. Now, I believe you stated that you have carried Goodyear all this time, have you? A. Yes, sir.

Q. Have you ever carried Firestone? A. Oh, I have had a few during the war, when I couldn't buy no tires, but I had any kind of tire I could buy in those days.

Q. Which war was that, War II or Korea? A. War II.

Q. Do you at this time advertise Firestone? A. No, sir.

(5981) Q. You do not? A. No, sir.

Q. You have no decals or signs around the station? A. No.

Q. You are not listed in the phone book as Firestone man? A. No, sir. I don't have any signs or decals at all.

Q. Is there a retail outlet of Firestone products anywhere near you? A. No, sir.

H. Helmcamp, for Respondents—Cross

Q. Or in the town of Schulenberg? A. No, sir.

Q. How about Goodrich, is there a retail outlet of Goodrich products? A. They have a Conoco station there.

Q. Where is it located? A. Right across the street from me.

Q. Is that the only outlet for Goodrich? A. That is right.

Q. You sell mainly to the farmers in the area? A. Yes.

Q. And you sell to them on credit, do you? A. Yes.

Q. About 50 percent of your business is on credit, is it not? A. No, not that great.

Q. Is this, how great would it be? (5982) A. Oh, I would say about 20 percent.

Q. How much of your business would you say was devoted to wholesaling? A. Well, on the tire business and battery business, I imagine about 25 or 30 percent, something in that neighborhood.

Q. You limited that to tire and batteries. Are those the only things you sell at wholesale? A. I sell everything that I have in that station.

Q. What else do you have? Do you have accessories? A. I have accessories.

Q. Do you sell any of those at wholesale? A. Yes.

Q. Well, how much would that amount to? A. That is about the same, about 20, 25 percent.

Q. You mean in addition to tire and batteries? You told me— A. (interposing) I mean, overall picture of everything. Tires and batteries and accessories lines, about 20 percent of the total.

Q. Twenty percent? A. I mean 20 percent, yes.

Q. Now, of the retail business, isn't that line that you extend credit to the local customers? A. Yes, sir.

Q. And do you also extend credit on your wholesale business? A. Yes, sir.

H. Helmcamp, for Respondents—Cross

(5983) Q. What do your sales consist of mainly to the local people? Farm equipment— A. (interposing) Everything. All the complete—I carry a complete line of tires, that is, farm equipment, for trucks, and automobiles.

Q. What is the population of Schulenberg, Mr. Helmcamp? A. I would say approximately 3,000, maybe a little more.

Q. Is that a suburb of Dallas? A. No, sir.

Q. How far is it from Dallas? A. It is a long way from Dallas, 245 miles. It is half way between Houston and Dallas.

Q. How many stations of all kinds are in your town? A. Oh, there are a lot of stations. I couldn't tell you exactly. There are three of them right around my station, two on the next corner, and two below.

Q. There are five of them right around your place, is there not? A. Well, three of them around, right on each corner there is one, and up north on 77, and then going west on 92, about four there.

Q. Are there any other Texaco stations in town? A. One, sir.

Q. Where is he located? A. He is about two blocks from my station.

(5984) Q. Do you sell him your supplies? A. No, sir, I don't sell to him.

Q. Do you know what TBA he sells? A. Well, he picks it up as he uses it.

Q. He doesn't stock any? A. He stocks very, very little.

Q. Where does he pick it up, do you know? A. Oh, he gets Brasher Supply Company, which is at Weimar, and Harry Auto Supply in Schulenberg.

Q. Do you know what he gets from those supply points? A. He gets everything he uses, belts, batteries, tires.

K. R. Roberts, for Respondents—Direct

Q. Are there any Firestone or Goodrich tires among those items? A. I think mostly U. S. tires, and he picks up some off brand tires from somebody there that he sells for truck. I don't know what you call them.

Q. Do you know him very well? A. Yes, sir. He used to work for me.

Q. He used to work for you, you say? A. Yes.

Q. Are you quite sure you don't advertise Firestone Tire's products at this time? A. No, sir.

Q. Or any time in the past? A. No, sir.

(5985) Q. What does this Texaco dealers council consist of? A. Well, there is one dealer out of each area and we meet with officials of the company.

Q. Meet what? A. Meet with officials of the company and try to get better understanding between the company and the dealers. If there is anything to be done to help the dealers.

Q. Do you travel around doing that? A. Oh, I have gone around and talked to some of the dealers, yes. I haven't had any complaints.

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(5986) K. R. ROBERTS was called as a witness for the Respondent and, after being properly and duly sworn, was examined and testified as follows:

Direct examination by Mr. Lorenzen:

Q. Give your name and address to the reporter, please.

A. K. R. Roberts, 1935 Colony Drive, Irving, Texas.

Q. Mr. Roberts, you testified before down in Dallas when the counsel supporting the complaint called you, did you not? A. That's true.

Q. At that time you told us you were the TBA representative for the Dallas division, as I recall? A. That is correct.

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Q. And you started to tell us what your duties were, and Mr. Dias asked you if they were the same as Mr. Underhill— A. (interposing) That is correct.

Q. (continuing) —and you said you had the same position and he called it a day at that point. Do you remember that? A. Yes, sir.

Q. And that is still the situation? A. Yes, sir.

Q. That you have the same position as Mr. Underhill has? A. Yes, sir.

(5987) Q. It has to do with helping the dealers market their TBA? A. Yes, sir.

Q. And, also, with seeing what you can do about selling Firestone and Goodrich TBA to the dealers? A. That is correct.

Q. Now, I have abbreviated that very much. You have a lot of other things to do, don't you? A. That is true.

Q. And you still say that they are the same duties and functions as Mr. Underhill has described? A. Correct.

Q. You also testified at that time you were acquainted with the Texas Company's letters, which have since been marked in evidence as Exhibits 26, 27, 28, and 29. Have you had a chance to look at them this morning just before you took the stand? A. I have.

Q. Are you acquainted with the Texas Company's TBA policy as stated in those letters? A. I am.

Q. What was your understanding of that policy? A. The Texas Company's TBA policy is briefly this: The company, realizing that dealers need to sell TBA merchandise right along with their petroleum products for two reasons—to make more income for themselves, and to satisfy a greater (5988) number of automobile owners—recommends that a dealer handle a quality product of TBA merchandise. We recommend Firestone and B. F. Goodrich, but we recognize the independence of the dealers to handle

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any brand that he chooses or no brand at all. The option is entirely his own.

Q. Have you, in your contacts with dealers and your contacts with the Texas salesmen and dealer service representatives, acted to the best of your ability in accordance with that policy? A. I have.

Q. Have you been acquainted with Exhibit 26-E, which states that the author, who is in the New York office, emphasizes that the Texaco dealer is an independent businessman and must be permitted to operate as one? Anyone who violates these policies may be subject to immediate dismissal from the company service? A. I am very well acquainted with that letter.

Q. At about the date of that letter, did you have any occasion to hear a discussion of that letter by the author of it? A. Yes, sir. I was, if my memory serves me correctly, it was about two months after the letter was issued. That could vary a month before or a few months after that. Mr. Hochuli, who was the author of the letter, I believe at the time, was general sales manager. He was in Tulsa at one of our semi-annual sales meetings, and after the meeting was over, I think Mr. Hochuli just attended a very short part of that meeting, (5989) or maybe none of the meeting, he may have been there on other business, we were in a room one night, having a little happy hour, and Mr. Hochuli gathered us all around him and was very, very specific about this letter and requoted part of his letter, and let us know in no uncertain terms that he meant everything that was in that letter and that he wanted all of us to understand that the policy was to be carried out by all employees.

Q. Did he give you any indication that the sentence in there which says you must respect the independence of the dealer was only put in there for window dressing or for some legal purpose? A. He certainly didn't.

K. R. Roberts, for Respondents—Direct

Q. It was your understanding that injunction there meant what it said? A. Yes, sir, he made that very plain.

Q. Have you acted in accordance with that understanding? A. I have.

Q. Now, you were present and you testified in Dallas, when the Government called you to testify, and you heard the complaints made down there which related to the battery sales? A. I did.

Q. Now, do you know in general the trend of battery sales in the Dallas division of the Firestone and Goodrich batteries and Texaco stations? A. I do.

Q. Do you know generally whether it has been an up trend or (5990) a down trend? A. Well, our battery business in late 1955, when the effect of Firestone, who was the first marketer of the dry charge battery followed by B. F. Goodrich—and I believe in our division about the 1st of 1955; they were the two leaders in the market of dry charge batteries—when this trend to dry charge batteries started to take effect and became genuinely known and commonly known by the dealers of the advantages of dry charge batteries, our battery business picked up, because we had a definite advantage over the marketers of wet charge batteries, due to the benefits of longer shelf life at service stations. This continued on through 1956 and 1957, and I would say it hit its peak in the latter part of '56 and the first half of 1957.

Now, as other battery manufacturers came out with dry charge batteries, got their advertising programs going, and doing a good job on that and acquainting all dealers with it, and getting around to soliciting all of the dealers, we now have run into a strong competitive situation, especially from Delco and Southland in the Dallas area, and our battery sales have fallen in the last year, and at the present time, I think we are about 20 percent behind last year's sales in batteries in our Dallas division.

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Now, I attribute it all to the fact that the manufacturers of non-sponsored TBA, that is other than Firestone and Goodrich, now have their dry charge battery programs rolling, (5991) and they are just tough competition and are getting more of our business than we would normally get.

Q. So at the time of the hearings down in Dallas, it was pretty nearly the peak of your success in connection with this change-over to dry charge, that was in January of '57?

A. January of '57 and our best business came in the last six months of '56 and the first six months of 1957, so that would be pretty well in the middle of our peak period.

Q. Was there a definite up trend in your battery picture with the advent of the dry charge batteries? A. Oh, definitely. It increased beautifully.

Q. Now, were you requested in connection with this case and with your testimony to go out in the Dallas division and come back with some pictures of battery displays, open displays at lessee Texaco dealers' stations? A. I was.

Q. And were you asked in that connection to take pictures of displays of batteries other than Firestone and Goodrich? A. Yes, sir, I was.

Q. Also, of Firestone and Goodrich batteries if such batteries were displayed alongside of the batteries that were other than Firestone? A. That is true.

Q. Was it among your instructions that under no circumstances were you to make any change in the subject matter of the pictures (5992) which you took? A. Those were my instructions.

Q. Was it also your instructions that you were not to let any dealer know ahead of time that you were coming to take those pictures? A. That is true.

Q. So, did you go out and take the pictures? A. Yes, sir, I took the pictures and all the pictures in that album are unposed. They were taken exactly as the display was when I walked into the service station.

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Q. You walked into it cold, and did you ask permission to take the pictures? A. Well, certainly, that is only, I would say, good manners to ask the dealer or the dealer employee that I would like to take a picture. In no case was I ever refused.

Q. And you did not, yourself, ask the dealer to make any change whatever? A. None whatever.

Q. This is exactly as the pictures looked on the date when you walked in there? A. That is true.

Q. Now, is each one of these pictures identified by dealer's name, the location of the station, the type of batteries shown in the picture, and the date of the picture? A. True.

(5993) Q. And that represents the actual facts with respect to each one of these pictures? A. That is true.

Q. Now, were you able to take all of these pictures, yourself, or did you have to delegate any of this picture taking to someone else in your office? A. Well, I took all of the pictures that time would permit. There were some stations I was unable to make, Mr. Lorenzen, during this, because of other duties and time element from the time I was requested to make this. But I asked a man in my office, who is the representative of dealer training, Mr. H. L. Cain, who was holding a series of dealer training conferences throughout the State of New Mexico, if he would during his time out there, to take such pictures exactly as I took them in other parts of the division, and I gave him the same instructions that I had and Mr. Cain was nice enough to take a small portion of the pictures that—there are 21 to be exact throughout New Mexico, and he made a good portion of the state. He was not in the Northeastern section of New Mexico, and made no special trip to take pictures in the Northeastern section.

Q. You gave him exactly the same instructions that had been given to you? A. Well, that is true, and that is noth-

K. R. Roberts, for Respondents—Direct

ing unusual. We handle things that way a good portion of the time, and make (5994) business decisions on the judgment of a man like Mr. Cain sometimes.

Q. Well, did he report back to you that he had done what you told him? A. Yes, sir, he did.

Q. And he handed you the pictures and the identifications thereof? A. He handed me the pictures with the writing on the back and the date that he took them. Each one of these pictures, so there would be no confusion on identification of the pictures. And that procedure, incidentally, was carried out throughout the picture taking.

Q. And then, the typewritten tags underneath were something prepared in your office? A. Prepared in my office by a stenographer, but she didn't put any picture in the book. I put the pictures in the book personally on all in the first section. Mr. Cain assisted me in putting the pictures in that last section, which contains only 21 of the 238 pictures that are in that album.

Q. And the pictures that Mr. Cain helped you put in the book and which he took, pursuant to the instructions which you gave him, are contained in the last two pages? A. Last two pages.

Q. Everything else is something that you took personally? A. I took personally.

(5995) Q. Now, is this album which I show you the album of pictures which you took or had taken pursuant to the instructions? A. That is the album, yes, sir.

Mr. Lorenzen: Give it the next number, please.

(Whereupon, the document was marked Respondent's Exhibit 74 for identification.)

Mr. Lorenzen: I offer it in evidence.

K. R. Roberts, for Respondents—Voir Dire

(5996) *Voir dire examination by Mr. Dias:*

Q. Mr. Roberts, are you going to be able to tell us which of these cities on each of the pictures are suburbs of Dallas? A. Yes, sir, I can tell you which of the dealer locations are in the suburbs of Dallas.

Q. And on each of these pictures, do they purport to show the full condition of the station or just the situation in connection with batteries? A. They purport to show only the situation of the batteries in Dallas. At the hearing batteries was the only complaint that came up so I didn't take tires. I didn't take the same situation as to tires and accessories.

Q. Do these pictures purport to show all of the stations in each area? A. No, sir, my instructions were to take pictures, time permitting, of the stations that normally stocked the non-sponsored batteries, that is, batteries other than Firestone or B. F. Goodrich, and these pictures, Mr. Dias, gave that representation very, very closely. I would say that situation would be accurate to a very high degree. There were some instances, for instance, Mr. Heth, who testified I believe yesterday or the day before, that the day I was in his station he had only one Delco at that time and it was out where it looked like it was going to be put in a car, so I didn't take (5997) any picture, but Mr. Heth's testimony, Mr. Heth was not at the station when I was there. The attendant was there and he was an extra boy and he said that he didn't know what he normally stocked and Mr. Heth has testified that he normally carried Delco batteries, as well as Firestone batteries. So, there would be exceptions like that that wouldn't be in there; probably exceptions both ways.

Q. More than likely. A. And you will find about six or eight duplications where it was necessary for me to take two pictures at the same location to portray the true stock-

K. R. Roberts, for Respondents—Voir Dire

ing condition or stocking habits of that dealer at that particular location.

Q. My point is that this is only part of the picture, is it not? These are only certain stations that you chose and there are other stations in the area that do carry Firestone and Goodrich batteries? A. Yes, sir, there are and probably others that carry non-sponsored batteries.

Q. What do these pictures propose to show, that these particular stations carry these particular products on this particular day? A. The album portrays the normal stocking habits of these particular dealers.

Q. Do you call on each and every one of these dealers? A. Not constantly. I make the whole Division. When I'm (5998) in a territory working, I would call on as many of the dealers as I could.

Q. Could you tell us how often you call on each and every one of these dealers in this album? A. Oh, my goodness, some of those dealers in the album, those particular dealers I had never called on before and there are some of them I have called on a number of times that I didn't get.

Q. My point is that you have testified that this is their normal stock. You don't know that of your own accord? A. Yes, sir.

Q. How do you know that? A. When I went into the stations to take the picture, I asked the man, I said, "Do you stock these normally?"

Q. You don't know it of your own knowledge that they do, is that correct? The man told you? A. Not day in and day out because the buying practices of dealers change. He may get mad at the salesman that is selling him and change. It is virtually impossible.

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K. R. Roberts, for Respondents—Resumed, Direct

(6000) *Direct examination (Resumed) by Mr. Lorenzen:*

Q. Is this Mr. Cain employed in the same office as you are? A. Yes, sir.

Q. Are you in the habit in Division Headquarters to rely upon information received back from the field by people such as Mr. Cain? A. Certainly.

Q. Do they report back to you whenever you ask them for specific information about anything that happens out in the field? A. Yes, sir.

Q. Do you act upon the basis of that type of information? A. Yes, sir.

Q. Do you make business decisions on that basis? A. Yes, sir.

(6001) Q. If any business decision had to be made as to these particular dealers in New Mexico, would you rely upon the type of information contained in that book to reach those decisions? A. Yes, sir.

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(6002) Hearing Examiner Kolb: I think under those circumstances, Mr. Dias's objection is well taken and that Mr. Cain should identify the pictures to show that they were in that condition at the time he took them, the date he took them, and so forth.

Now as to the notations on the bottom of the pictures taken by Mr. Roberts, I will overrule the objection on that. I think that as long as the pictures show the name of the station and the location of the station and Mr. Roberts has testified that was the condition at the time he took the picture, they are admitted for that purpose only to show that station and that condition at the time the picture was taken.

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K. R. Roberts, for Respondents—Resumed, Direct

(6003) Hearing Examiner Kolb: Let the record show that Respondent's Exhibit 74 is received in evidence with the exception of the last two pages, which were identified as having been taken by Mr. Cain. Those will not be received in evidence at this time. Objection is sustained as to those.

(The album referred to, heretofore marked for identification Respondent's Exhibit 74, was received in evidence with the exception of the last two pages.)

(6004) *By Mr. Lorenzen:*

Q. Mr. Roberts, will you look at page one. There is a picture of a dealer named Herman Herd, H-e-r-d. A. Yes, sir.

Q. Now, just to get the record clear on that, the picture shows some batteries and the name "Champion" is shown on those, is that correct? A. That is correct.

Q. Underneath you have put the dealer's name, "Herman Herd," and you have put "Lessee-Dealer." Does that mean that he has a lease from the Texas Company? (6005) A. That is true.

Q. One of these regular leases which we have been talking about that renews itself each year? A. That is correct.

Q. Underneath that you have "Dallas & Capitol, Canton, Texas," is that the address of the station? A. That is the address of the station.

Q. Then on the lefthand side of the tag, you have put "Champion" and is that the name of the battery? A. That is the name of the battery.

Q. Then on the righthand side you have put the date, "6/2/58," is that correct? A. That is the date the picture was taken.

K. R. Roberts, for Respondents—Resumed, Direct

Q. On occasion, did you on the same date take a good many pictures? A. Yes, there were some days I devoted quite a bit of time to it.

Q. And out in the less populated part of the State, may some of those pictures have been taken on the same day but be several hundred miles apart? A. Oh, yes.

Q. But you took them all yourself? A. I took them all myself.

Q. Now this description which we have given of Mr. Herd's station is typical of all of the descriptions contained in (6006) the book? A. That is correct.

Q. That is the name comes first and then the fact that he is a lessee dealer; then the address of the station and underneath that, the type of battery or batteries shown in the picture? A. Correct.

Q. And the date on which the picture was taken, is that correct? A. That is correct.

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(6012) Q. Now, let's look at the book and look at some of these other pictures, Mr. Roberts. This picture on page one of Mr. Heard's, was that taken in his office in his display room? A. Yes.

Q. And look at the picture of Mr. Whitehurst on the same page, was that taken in his office? A. Yes, sir, that was taken in his office as it goes out to the lube bay.

Q. On page two, will you look at the picture of Mr. Felts, F-e-l-t-s, and tell me whether you recall whether that picture was taken in his office? A. It was taken in his office. I was standing right in the entrance.

Q. Now, on the same page, will you look at the picture of Mr. W. H. Wells' station? A. Yes.

Q. Can you tell me where the Southland batteries are in (6013) that picture and the circumstances under which they appeared there? A. Well, the Southland batteries,

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the first letters are visible on the lefthand side of the battery display picture and are located back of that and Mr. Wells had about eight batteries, eight Southland batteries in stock and an equivalent number of B. F. Goodrich batteries and he had received a shipment on this day. His office is very, very crowded with merchandise. He carries a lot of merchandise and a lot of it is stacked on the floor, so you don't have a full view of all of the batteries. There were a lot of them, Goodrich and Southland, but I had to take the pictures exactly as they were and couldn't move anything from the front of them to get a full shot.

Q. Now look at page three, Mr. Watson, was that the only battery that was in his station at the time? A. That was the only battery that was in Mr. Watson's station at the time, but that station normally—

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(6014) Q. Were you there, Mr. Roberts, were you there when you took the picture? A. I took the picture.

Q. Do you have any recollection as to what the rest of his TBA stock was like? A. It was relatively low.

Q. Now, will you look at Mr. McGahey's picture on the same page. A. Which one?

Q. You have two pictures there? A. Yes, sir.

Q. That is what I wanted to have explained. There are a few cases in which there are two pictures, are there not? A. That is true.

Q. What was the occasion of your taking two pictures? A. Well, it is the only way that I could get the normal stocking habits of Mr.—

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(6015) Q. Try to use some other word than "normal" to explain why you took two pictures. A. I took two pictures because Mr. McGahey handles two types of batteries

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and they were both on display in his office and I took the two pictures and they were not close enough together that I could take in one to get the situation.

Q. Now, wherever you took pictures of a dealer who was in that same situation, namely, that he stocked more than one kind of battery and they were not close enough together to be taken in one picture, did you take two pictures? A. I took two pictures unless there was just an occasional battery around that may have been just picked up and was being installed.

Q. Otherwise you took two pictures? A. Took two pictures; yes, sir.

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(6018) Q. On Mr. McGahey you have two pictures, right? A. Correct.

Q. Now what sort of batteries are shown in that picture? A. In one picture there are about seven Firestone batteries. In the other picture there are six—I had better spell it—"X-S-E-L" batteries. Mr. McGahey in his testimony didn't know how to spell it.

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(6019) Q. Mr. Roberts, as you said, you live within six miles of Mr. McGahey's station? A. That is correct.

Q. In the last year, how often have you been in the station? A. I would say five or six times in Mr. McGahey's station in the last year.

Q. In the last year? A. Yes, sir.

(6020) Q. During that time, have you had occasion to observe the type of batteries that he has had in stock? A. I have.

Q. What kind has he had in stock? A. He has Firestone and X-Sel.

K. R. Roberts, for Respondents—Resumed, Direct

Q. He has had them throughout that period of time?

A. He has.

Q. As far as the numbers are concerned, would you say the number is substantially the same proportion as shown on that picture that we are talking about on page three of that book? A. Yes, sir.

Q. Look at Mr. Burch's, B-u-r-c-h, picture on page four.

A. All right, sir.

Q. At the time you were in that station, did he have any other batteries on display? A. No, sir.

Q. On page five, look at Mr. Howerton, H-o-w-e-r-t-o-n.

A. Yes, sir.

Q. I notice that there is only one battery there, is that correct? A. No, sir, that is not correct.

Q. How many does he have? A. He has six.

Q. I guess I can't see. He has six batteries on display. (6021) Among them, is there an Allied battery? A. Yes, sir.

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Q. Looking at page eight, picture of Mr. Cunningham's station, how many Exide batteries does that show? A. One.

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(6022) Q. On page nine, Mr. McGlasson's picture, I notice that the notation under your picture has "Chiefton" battery, (6023) C-h-i-e-f-t-o-n. Do you notice that? A. Yes, sir.

Q. And on the picture, I think there are some Chiefton batteries and also a "Comet" battery, which is not included in your notation. A. Yes, sir.

Q. Can you tell us, is that an oversight or is there some other explanation for that? A. There is another explanation.

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Q. What is that?

Mr. Dias: Before the witness answers, I want to know if this is going to be from knowledge.

Mr. Lorenzen: It has nothing to do with stocking habits at all.

Hearing Examiner Kolb: Let him proceed.

The Witness: I was informed—

Mr. Dias: (Interposing) I object, your Honor. He was informed.

Mr. Lorenzen: He is going to tell you a Comet is a Chiefton made by the same company—do you mind.

Mr. Dias: I don't see that it is relevant. It is not Firestone or Goodrich anyway.

By Mr. Lorenzen:

Q. Comet battery is not a Firestone or Goodrich and if it is not made by Chiefton, it should have been included as a (6024) separate notation under the picture? A. Yes, sir.

Q. Page 12, I think, Phil Adkins, A-d-k-i-n-s, I note there are only two batteries, I believe, on display there and I want to know if there were any others on display at the time you took the picture? A. No, sir.

Q. Page 13, Mr. J. C. Clinton, that is one of those two picture situations. A. No, sir, I believe you have your pages mixed up. On page 13 is D. M. Clinton.

Q. I got the wrong initials. Mr. D. M. Clinton, and what sort of batteries are shown on that picture? A. Parks, P-a-r-k-s.

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Q. And you only have one picture for him. Look at the next page, page 14, you have Mr. J. C. Clinton and you have two pictures. A. Yes, sir.

Q. Did you take two pictures for the same reason that you (6025) took two pictures of Mr. McGahey's station? A. I did.

Q. On page 15, will you look at the picture of Mr. Harvey Bishop. How many batteries does that picture show? A. Two.

Q. What kind? A. Southland.

Q. Now in that picture, do you have any recollection whether there were additional Southland batteries in Mr. Bishop's stock at the time you were at the station? A. Yes.

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Q. There were additional Southland batteries in stock? A. Yes, sir.

Q. Page 15, Mr. Bachman, B-a-c-h-m-a-n, the picture shows how many, two batteries? A. Yes, sir.

Q. Were there any other batteries in stock at the time you were in his station? A. No, sir.

Q. Page 17, Mr. Cooper, will you tell us whether the picture which shows the batteries on it is a picture of a part of his (6026) station which is his office or his lube bay? A. It is the full portion of his lube bay. They are wet batteries which are frequently stored in the lube bay.

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Q. Now on the same page, will you look at the picture of Mr. Jim Fox's station. Is that on page 17? Do you have a Mr. Fox on either page 17 or 18? A. Are you sure it wasn't Mr. Wolf?

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Q. Well, look at the picture of Mr. Terrell, T-e-r-r-e-l-l, page 17, and tell me, were those the only two batteries that he had in the station when you took that picture? A. They were the only two I saw, yes, sir.

. . .

(6030) Q. On page 20, Mr. Maples, M-a-p-l-e-s, is that the fellow's name? A. He is on page 20.

Q. How many Delco batteries are there in that picture? A. One.

. . .

(6031) Q. Page 23, Mr. Floyd, I see only one battery in that picture. What was that, a Vitalic? A. Yes, sir.

Q. And your description so indicates, is that right? A. Yes, sir.

Q. Did you observe any other battery in that station? A. Not new battery.

. . .

(6033) Q. Mr. Roberts, Mr. Miller on page 23, did Mr. Miller have any other batteries on display in his station on the day when you took that picture? A. No, sir.

Q. On page 24, how about Mr. Homer Lamb, did he have any other batteries on display in his station other than the one you took? A. No, sir.

Q. Same page, Mr. Woodrow Walker, you have on your caption under his picture that all of the batteries shown in the picture are Allied, is that correct? A. Correct.

Q. He kept his Allied batteries, did he, on a B. F. Goodrich battery stand? A. That is correct.

Q. On page 25, Mr. C. H. Ward, W-a-r-d, is he on that page? A. Yes.

Q. Was that a picture of his office or of his storage facilities? A. That is his office.

K. R. Roberts, for Respondents—Resumed, Direct

Q. On page 30, Mr. Pope, P-o-p-e—no, look at Mr. McKinney (6034) on page 26. is that the only battery which he had on display, the one that you have pictured there? A. Yes, sir.

Q. All right, now let us go to page 30 and look at Mr. Pope. There is a battery by the name of M-o-t-r-e-x shown there? A. Yes.

Q. Is that either a Firestone or a Goodrich battery? A. No, sir.

Q. And that is not included in your caption which refers only to Exide? A. It is the second line of Exide batteries.

Q. Motrex is a second line Exide battery? A. Yes, sir.

Q. Page 32, Mr. S-t-a-t-h-a-m, is this a picture of his office? A. Yes, sir.

Q. That is his desk chair showing on the lefthand side? A. Yes, sir.

Q. The next page, 33, Mr. B-r-a-l-e-y, the picture is not too plain, can you tell us how many Delco batteries are shown in that picture? Can you count them? A. Four Delco batteries are easily visible there. I think it is pretty clear myself.

Q. Those boxes on the lower shelf at the lefthand side are (6035) Delco? A. Yes, sir.

Q. The same page, Mr. P-u-r-t-l-e? A. Yes, sir.

Q. Those batteries—I guess this light is better—how many Southland batteries show in that picture? A. There are three Southland with the "Southland" name and then there were two "Special" batteries and there were two Firestone batteries.

Q. What are those "Special" batteries? A. They are not Firestone or B. F. Goodrich.

Q. That does not show on the caption under the picture? A. No, sir.

K. R. Roberts, for Respondents—Resumed, Direct

Q. Page 35, Mr. Hobson, were those the only batteries that he had on display at the time you were in his station?

A. Yes, sir.

Q. Page 35, Mr. Reynolds, do you know when you were in there, did you observe the size of the office that Mr. Reynolds had? A. Yes, sir.

Q. Was there space in that office to display any batteries? A. No, sir.

Q. Were any batteries displayed in his office? A. No, sir.

Q. The picture which you have taken is of the only batteries, (6036) which were in that station, is that correct?

A. That is correct.

Q. Page 36, Mr. Falph R-u-d-d—are those Winterking batteries Firestone or Goodrich? A. No, sir.

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(6037) Mr. Lorenzen: I would like to offer the proof by this witness that at the time he took the pictures, which appear in Exhibit 74, he endeavored to ascertain both by observation and by conversation either with the operator of the station or with the person in charge of the station whether or not the batteries pictured represented as of the time when the picture was taken the normal battery stocking habits of the operator of that station, and that he did not place pictures in that book of batteries other than Firestone or Goodrich unless he was assured as a result of such conversation or his own observations that the regular stocking habits with respect to batteries were represented by the pictures included therein.

Hearing Examiner Kolb: Well, now, on part of that I haven't foreclosed you. The only thing I have

K. R. Roberts, for Respondents—Cross

foreclosed is the conversations with the station operators or the attendants stating that they did or did not stock certain batteries. (6038) What he observed at the time, you have put in. There has been no objection to that.

(6039) Q. Just so that we won't have to count it up, do you know about how many different trade names of batteries are represented by those pictures in Exhibit 74?

A. Yes, sir, there are about 40 different brand names.

Q. How many? A. Forty different brand names.

Cross-examination by Mr. Dias:

Q. Mr. Roberts, these pictures in Exhibit 74, were they or were they not made in the regular course of your business. By that, I mean, do you normally go around taking pictures of stations? A. No, sir.

Q. And do these pictures purport to show all of the batteries (6040) that you saw in this station at the time of the taking of the picture? A. I would say 98 percent of the instances which is covered in testimony prior, there would be an occasional battery that wouldn't represent stocking habits.

Q. But you talk about display, how do you interpret your term "on display," that is what I would like to know? A. Display would be anything that is evident that it is salable merchandise, that could be seen, and the sale of merchandise would be made partly from display. Of course, dealers display merchandise in a lot of different ways, so you wouldn't have any set pattern. There is a fairly general pattern that batteries are displayed normally. Of course, it is not an impulse item. Batteries are displayed

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normally in the office in the case of a dry battery, and where there is ample room. In the case of wet batteries, they are frequently put on the bay or work alcove area, so the acid activation of these acid type batteries would not damage the wood or other materials in the office building.

Q. Do you have that book, page three, in connection with Mr. Wells? I believe you testified that he was getting a shipment in or he got a shipment in? A. He had a recent shipment.

Q. Recent? A. Yes, sir.

(6041) Q. Did the shipment arrive while you were there? A. No, sir.

Q. And in connection with Mr. Watson, on page four, you testified that his stock was relatively low. A. Yes, sir.

Q. What did you base that observation on? A. It is very easy to go into a station. Of course, I was acquainted with the stock of the prior dealer.

Q. Sir? A. I was acquainted with the stock of a prior dealer in this station, and he kept more accessories and so forth than Mr. Watson had.

Q. Well, let's restrict it to Mr. Watson. You say his stock is relatively low. What is relatively low? A. Well, relatively low, according to that type of station.

Q. Let's restrict it to Mr. Watson. Do you know what Mr. Watson normally carried in his station? A. No, sir. Mr. Watson was a new dealer.

Q. How long had he been in there? A. Just a few weeks.

Q. In connection with Mr. Bishop, page 15, you stated that there were additional Southland batteries in stock. Where were they? A. There were some more right in the office. If my memory serves me correctly, there were two or three more that were (6042) scattered. His whole stock is in great disarrangement, as you can see, all of these various brands of oil he has there.

K..R. Roberts, for Respondents—Cross

Q. Which one is that? A. Right here. He had back here, a battery, he had a battery over there, but he had a lot of things spread out around. It is a very—it is an unusually small office and it is jammed together, it is narrow and longer than the normal office, and he can't display merchandise exactly like others.

Q. Among the other batteries you saw scattered around, were there any Firestone or Goodrich? A. No.

Q. Page 33, Mr. Purtle, will you point out the two special batteries? I see one down in the right-hand corner, where is the other one? A. Special right here, and there is a Special right there.

Q. On the top. And you know they are not made by Goodrich or Firestone? A. Yes, sir.

Q. Is "Special" the trade name of that battery? A. Would you like an opinion?

Q. No. I want to know what you know. You don't know? A. I don't know, no. Not for sure.

Q. Now, if you will, start at page one, and may we go off the record a minute?

Hearing Examiner Kolb: Off the record.
(6043) (Discussion off the record.)

Hearing Examiner Kolb: On the record.

By Mr. Dias:

Q. During your earlier testimony, you told us that there are 190 Texaco stations in the Dallas County? A. Yes, sir.

Q. And that Dallas County would include some small towns that are not more than 15 miles from downtown Dallas? A. That is true.

Q. Now, with that in mind, will you tell us which communities are within that 15-mile radius, or if it is easier to go through the exhibit, I wish you would do that. A. It

K. R. Roberts, for Respondents—Cross

would include Dallas, Garland, Irving, Grand Prairie, Arlington; I believe that would probably represent the area as covered in this book, but I would like to glance through it just a second to see.

Q. Please do.

Just to repeat: You have looked at the various pages of Respondents' Exhibit 74 and you have stated that in the Dallas area, as you have described it earlier in this case at transcript page 1765, included among the suburban areas were Garland, Irving, Grand Prairie and Arlington. Now, having looked through Respondents' Exhibit 74, are there any other suburban areas you care to name? A. I think that is all.

(6044) Q. I think that is all. All right.

Now, referring to Respondents' Exhibit 74, can you give us, as I understand it, this does not represent all the stations in those various areas, is that correct? A. That is correct.

Q. Can you tell us the total number of Texaco stations in the whole combined area shown in Respondents' Exhibit 74? A. All Texaco stations?

Q. Yes, sir. A. I think there is something like, I believe it is between 2,400 and 2,500.

Q. And that would take in to account all the Texaco stations in each and every area that you mentioned in Dallas— A. (Interposing) The Dallas division.

Q. Well, now, how about any stations that may be shown in Oklahoma, for example, or New Mexico, Arkansas, is that the Dallas division? A. Yes, sir. Since the previous hearing in Dallas, four counties—let's say roughly four or five counties of Arkansas have been added to the Dallas division, and they would include the areas of Rogers, Mena, Fort Smith, and Fayetteville.

K. R. Roberts, for Respondents—Redirect

Q. And the figure you gave, 2,500, that is your best estimate of the total number, is that correct? A. Yes, sir, of all stations.

Q. All Texaco stations? (6045) A. All Texaco service stations.

Mr. Dias: I have nothing further.

Redirect examination by Mr. Lorenzen:

Q. Mr. Roberts, in taking these pictures, the only types of stations that you would go to even looking at were the type that were leased by the Texas Company to lessees, isn't that correct? A. That is correct.

Q. And you were even told to exclude the type of stations where the operator owned the property and leased it to the Texas Company and then the Texas Company leased it back to him? A. That is correct.

Q. Aren't there an awful lot less than 2,500 stations of that kind? A. Quite a few less.

Q. In fact, what are there, around 700, something like that? A. Mr. Lorenzen, the last report that I have seen on the total number is in mind, was about 650, and we have added some; so, I would say about 700 is a—this was about roughly a year ago, I believe, that report for something that I chanced to see.

Q. And in connection with this picture taking, you didn't get around to even all of the 700 stations, did you? (6046) A. Probably about 500 stations.

Q. Among those 500, were there a good many that didn't handle any batteries at all? A. Quite a few.

Mr. Lorenzen: That is all.

Mr. Dias: I have nothing further.

(Witness excused.)

Colloquy

Mr. Lorenzen: Your Honor, there were some witnesses that were sick or for business reasons or on vacation, couldn't attend these hearings. I understand we have another session scheduled in December, and it may be, unless you think it is too cumulative, that we may want to produce a few of those whose names have heretofore been noticed to counsel at that time.

Now, I understand—do you want this on the record? We can do something about those pictures.

Mr. Dias: Yes, sir. I don't mind stating for the record that in connection with pages 39, 40, 41, and 42 of Respondents' Exhibit 74, which, as I understand, were taken by Mr. Cain, it will not be necessary to have Mr. Cain come in and identify these things provided it is also understood that they are in for the same limited purpose as all the other documents in that particular exhibit.

Hearing Examiner Kolb: In other words, you are willing to stipulate that if Mr. Cain was called in to testify, that he took those pictures, and that those pictures represent (6047) the conditions of the stations at the time he took them.

Mr. Dias: That is correct.

Hearing Examiner Kolb: And the name and address of the station appearing—

Mr. Dias (Interposing): I think that is so.

Hearing Examiner Kolb: With that stipulation, we will receive in evidence pages 39 through 42.

(Whereupon, the documents, heretofore marked pages 39 through 42 of Respondents' Exhibit 74 for identification, were received in evidence.)

Hearing Examiner Kolb: So, now, the entire Exhibit 74 is in evidence.

John T. Bolger, for Respondents—Direct

Mr. Lorenzen: That is all we have at this time.

Hearing Examiner Kolb: The hearing is adjourned to reconvene on Wednesday, December 3, Room 332, Federal Trade Commission Building, Washington, D. C., to be continued for eight days as previously set out in the notice.

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(6052) JOHN T. BOLGER was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Bolger, will you give your name and address to the reporter, please? A. My name is John T. Bolger. I live at 18 Florence Street, Dobbs Ferry, New York.

Q. Are you employed by the Texas Company? A. Yes, sir.

Q. What is your position at this time? A. I am assistant division sales manager of the New York division.

Q. Do you want to go back a little before that time and tell us what some of your other positions have been? A. Shall I start at the first or just go back?

Q. Why don't you go backwards? When you have gone far enough we will stop. A. I came to the New York division July 1st of this year, (6053) on this particular job. Previous to that, beginning January 1, 1958, I had exactly the same job in the Boston division.

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(6054) Q. All right. Now will you tell us what position you held before January 1, 1958? A. Well, the period September 1, 1954, until January 1, 1958, I was assistant division manager, sales promotion in the Boston division.

John T. Bolger, for Respondents—Direct

Q. Then from April 1952 to September 1, 1954, what was your job? A. I was state manager of Oklahoma.

Q. And from 1949, sometime in that year, until April of 1952, what was your position? A. The entire year of 1949, 1950, and 1951, and until the first of April 1952 I was zone manager in Dallas.

Q. During the time you held these positions, tell me whether you became acquainted with these documents which have been marked Respondent's Exhibits 26, 27, 28, and 29, I believe. (Showing documents to the witness.) A. Yes, sir, I am familiar with those.

Q. And you have looked at those this morning before you took the stand, did you? A. Yes, I did.

Q. And you know that those are the policy statements of the Texas Company relating to TBA? A. Yes, sir.

(6055) Q. Now, you didn't see all of these identical letters because some of them came to you while you were in the Boston division, is that correct? A. That is right.

Q. And what I have shown you here are the policy letters that went to the Dallas division? A. Yes, sir, those were there you showed me. Then we had a similar letter later on in Boston.

Q. From the time you went on to Boston you had the same type of letters in the Boston division? A. Yes, sir.

Q. Now, during the time when you held these positions which you have described, have you followed the Texas Company's policy as set out in the Exhibits 26, 27, 28, and 29, which I have shown to you? A. Yes, sir.

Q. While you were zone manager in Dallas, did you know a dealer by the name of C. M. Williams? A. Yes, sir.

Q. Where was his station located? A. It was located at Fourth and Forest Avenues in Dallas.

Q. I want to call attention to the testimony of a witness in this case, Mr. Kelly McCann of the Continental

John T. Bolger, for Respondents—Direct

Battery Company, who testified at Pages 1574 and 1575, referring to Mr. Williams: "We sold him years and years ago when he had (6056) his old building. When a new building was put up, we lost out."

Now, were you zone manager at the time when a new building was put up? A. Yes, sir, I was.

Q. Will you tell me who owns the property on which Mr. Williams' station was located? A. Mr. Williams.

Q. Now, he did put up a new station, did he? A. Yes, sir.

Q. About when? A. Well, it was in 1951. The station was completed, I am positive, late in 1951 because I left there soon afterwards, in the early spring of 1952. It was completed in the latter part of 1951.

Q. Were you the employee of the Texas Company who talked to Mr. Williams about this new station? A. Yes, sir, I was.

Q. And did you talk to him about it? A. Yes, sir.

Q. Did Mr. Williams put up that station or did the Texas Company? A. Mr. Williams put the station up.

Q. And did the Texas Company put up the money for that station or did Mr. Williams put it up? (6057) A. Mr. Williams furnished the money.

Q. Did you at any time tell Mr. Williams that he would have to handle only Goodrich or Firestone TBA? Did you at any time tell him anything like that? A. Did I tell him that?

Q. Yes. A. No, sir.

Q. Did you have quite a few conversations with him? A. Quite a few, I would judge, during the building of that station, yes. I had quite a few conversations with him.

Q. In connection with those conversations, did you ever tell him anything like that? A. No, sir.

John T. Bolger, for Respondents—Direct

Q. Did you ever tell him he had to stop selling Mr. Kelly McCann's Continental batteries? A. No, sir, I didn't.

Q. Now, did you ever see Mr. Williams' old station and his new station? A. I saw both of them, yes, sir, the old station and the new.

Q. What about the TBA which was being handled both at his old station and at his new station? Was it exclusively Firestone and Goodrich TBA? A. No, sir. He handled everything.

Q. He bought from a good many sources, did he? (6058) A. A good many sources, yes, sir, he did.

Q. Do you remember anything particular about Mr. Williams' buying habits in connection with TBA? A. Well, I knew Mr. Williams quite well. He was a pretty good friend of mine and he had been in our station for a long, long time there. He was a good customer, his station was, and he had lots of friends throughout that part of Dallas that were peddlers and they came by. He would buy from everybody. He couldn't turn anybody down, hardly.

Q. And did his station look like that? A. It did. It was a hodge-podge of everything.

Q. That was so both before and after? A. Yes, sir. He didn't change his friends after he built the new station. He kept the same friends and purchased from them.

Q. During these conversations which you had with Mr. Williams, did he ever tell you that anyone connected with anybody in the Texas Company or connected with anybody else had told him that in order to handle your gasoline he had to buy from Firestone or Goodrich exclusively? A. No, sir. He didn't tell me that.

Q. He never complained to you that anybody had told him that at all? A. No, sir.

John T. Bolger, for Respondents—Cross

(6059) *Cross-examination by Mr. Dias:*

Q. What was your position, again, and the dates of the position in Dallas at that time, Mr. Bolger? A. I was zone manager during the years 1949, 1950, 1951, and until April the First, 1952.

Q. What were your duties as a zone manager? A. Well, a zone manager actually was the complete sales manager of that particular zone. I mean, you handled virtually all the problems that might arise from a sales standpoint in that particular zone.

Q. How large a zone was that? A. It was a big zone, the largest we had in the Dallas division.

Q. Can you tell us roughly how many stations, Texaco stations, there were in that area? A. No, sir, I couldn't. That has been a long time ago. I wouldn't hazard a guess, actually.

Q. But, nevertheless, you specifically recall this particular Mr. Williams? A. Sure, I do.

Q. How often did you call on the stations? A. Well, that is hard to say. In the course of the three or four years, three years I was there, I am positive I must (6060) have been in Mr. Williams' station—and you must take this as an estimate—twelve to fifteen times.

Q. In a three-year period or two-and-a-half year period? A. At least that many, I would say, yes, sir.

Q. What degree of regularity did you use in calling on stations? A. There was no degree of regularity. I mean, you would call on him when the occasion would arise, where it was necessary to go out and see him. We had salesmen that called on him regularly and I, no doubt, went out there quite a few times when he was in the process of rebuilding.

Q. You say "no doubt"? A. I did go out there.

John T. Bolger, for Respondents—Cross

Q. Do you recall what he carried after he built the new station? A. Carried in what respect, sir?

Q. Batteries, tires. A. He continued to carry various lines. He had all types of merchandise.

Q. Now, was there more than one seller for these various lines of TBA products in Dallas, or was there at that time? A. Oh, sure. There is various suppliers of accessories items and TBA items, yes.

Q. Selling the same brand name products; is that so? A. That is entirely possible. It could have been.

(6061) Q. Now, in your twelve to fifteen visits to Mr. Williams' station, how do you know that he was buying from a multitude of sellers? A. Because he had a multitude of products.

Q. You mean every product in his place of business was different? A. I don't know exactly what you mean.

Q. Well, did he have any lines at all? Didn't he carry the Firestone or Goodrich line? A. I am not sure. He could have carried some of those.

Q. What other products did he have in there? A. I don't know. I couldn't tell you exactly. It has been a long time ago. I know that he bought from numerous people and he had various types of merchandise.

Q. Without being able to recall the products that he carried, you know that he got them from many different people? A. Yes.

Q. You stated that you are familiar with these policy letters that Mr. Lorenzen showed you? A. Yes, sir, the essence of the letters, I am familiar with them.

Q. No need of my showing them to you again. You probably carry them around in your briefcase all the time, too, don't you? (6062) A. I don't know that I always carry them around.

A. G. Russell, for Respondents—Direct

Q. You showed them to Mr. Williams and other dealers to emphasize the fact that it was company policy? A. I don't recall ever showing any letters to the dealers. Our dealers knew of their independence insofar as TBA merchandise is concerned.

(6063) A. G. RUSSELL was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Russell, will you give your name and address to the reporter, please? A. A. G. Russell is my name; I live at 712 Elm, Northwest, Ardmore, Oklahoma.

Q. What is your position with the Texas Company? A. I am District Sales Representative, Ardmore, Oklahoma.

Q. For how long have you had that position? A. January 1, 1957, I was appointed District Sales Representative.

Q. And before that time, what was your position with the Texas Company? A. Before that time I was Zone Manager for the Texas Company.

Q. How much territory did that cover? A. That covered South Central Oklahoma, approximately 10 counties.

Q. For how long have you been employed by the Texas Company? A. I have been employed by the Texas Company 27 years.

(6064) Q. How much of that time has been in the sales department? A. 27 years in the sales department.

Q. During the course of your employment did you receive copies of these letters which went out from the Dallas Division which have been marked Exhibits 26, 27, 28, and 29?

A. G. Russell, for Respondents—Direct

(Showing documents to the witness.)

A. I sure did.

Q. Did you have a chance to look at them this morning before you testified? A. Yes, sir; I did.

Q. And these are copies of the letters which you received? A. Same letters.

Q. During your employment by the Texas Company have you followed the Texas Company's policy as set out in those letters? A. I absolutely have.

Q. Is Duncan, Oklahoma in the zone of which you were zone manager back there between 1955 and 1957? A. Yes, sir.

Q. Now, at pages 1640 and 1641, a witness by the name of D. A. Zimmerman, a salesman for the Continental Battery Company testified in January of 1957 with respect to a Texaco dealer by the name of Steve Rowland at Duncan, Oklahoma, that this Mr. Rowland was almost stock-buying from Mr. Zimmerman who was peddling Continental Batteries. That he had (6065) been buying about six batteries a month for three or four years prior to the date of his testimony, and that about six months before the date of his testimony the sales started tapering off.

Now, as I understand that testimony then, he had been selling for three or four years prior to January of 1957, which would be back to 1953 or 1954. Now, what I want to know is, was Mr. Steve Rowland a Texaco dealer in 1953 and 1954, and 1955? A. Mr. Rowland went into this new service station December 1, 1955.

Q. So that is just 13 months before January, 1957, when Mr. Zimmerman testified? A. Yes.

Q. You know that because this was a new station? A. It was a new station; yes, sir.

Q. It was a brand new operation and it didn't open until December 1, 1955; is that right? A. That is right.

A. G. Russell, for Respondents—Direct

Q. And Mr. Rowland was installed by you in that station? A. By me.

Q. And he was not a Texaco dealer before that time? A. No, sir.

* * *

(6066) Q. Now, any sales by Mr. Zimmerman to Mr. Rowland more than six months before the date when he testified, then, were made to him within six months of the time when he opened the station? A. That is right.

Q. When you installed Mr. Rowland in this station, did you tell him anything about the Texas Company's TBA policy? A. Yes, sir. I told Steve that I recommended Firestone-Goodrich products to him because of their national public acceptance, but I also told Steve that he was in business for himself out there and he could handle whatever he wanted to handle, but Steve told me that he liked Goodrich, so I didn't try to sell him any further.

Q. Well, now, did you ever know whether he was handling these Continental batteries? A. No, I didn't.

Q. You didn't know one way or the other? A. No, sir.

Q. Did this Steve ever complain to you that anyone had told him that he had to buy only from Firestone or from Goodrich? A. He never did.

Q. Never said anybody told him anything like that? (6067) A. He never did.

Q. Were you the only salaried employee of the Texas Company that had anything to do with him? A. I was the only salaried employee of the Texas Company that had anything to do with that station.

Q. That is, out in the country there the zone manager himself does the contacting? A. That is right.

Q. And you had no salesmen under you whose job it was to contact Mr. Rowland? A. I had no salesman, therefore, I made the contact.

A. G. Russell, for Respondents—Direct

Q. You, yourself made the contacts and called on him?
A. That is right.

Q. And were you in his station at all after you installed him in December, 1955? A. Yes.

Q. Did you ever tell him that he had to stop handling Continental batteries, that he had to cease stocking them?
A. Absolutely not.

Q. Did you ever suggest to Mr. Rowland that he would be treated badly if he handled Continental batteries or any other TBA which was not in the Firestone and Goodrich line? A. I never did.

Q. Did you ever indicate to him that his lease might be cancelled if he didn't handle Firestone or Goodrich? (6068) A. I did not.

Q. Did Rowland ever tell you that anyone else connected with the Texas Company had told him any such thing? A. No, he did not.

Q. Now, can you tell me what was the dollar volume of Firestone and Goodrich batteries which Steve Rowland purchased during 1956? A. During 1956, Steve purchased \$117 in batteries.

Q. Now, if we assume Mr. Zimmerman's testimony to be accurate, that he sold him six batteries a month or 72 batteries a year, how far would that \$117 go?

. . .

Mr. Lorenzen: No, I am using your witness's estimate that this particular dealer required 72 batteries a year because he said he was selling him six a month, on the average, stocking, and I want to know how far \$117 would go in buying 72 batteries a year.

Mr. Dias: Of what battery? Firestone or Goodrich?

A. G. Russell, for Respondents—Cross

Mr. Lorenzen: Firestone or Goodrich?

(6069) The Witness: Well, for \$117 you could buy eight or nine batteries.

By Mr. Lorenzen:

Q. All told? A. All told, yes.

Q. So, even if it be assumed that for the first six months this gentleman stocked Continental batteries and then stopped, this \$117 would only buy him eight or nine batteries the rest of the year; is that right? A. That is right.

Q. And that is all that the Texas Company ever had any record of his buying of Firestone or Goodrich batteries? A. That is right.

Q. So that if he didn't buy Continental he bought something else, not Firestone or Goodrich? A. I don't know what kind he bought.

Q. But it wasn't Firestone or Goodrich? A. It wasn't.

(6070) *Cross-examination by Mr. Dias:*

Q. Was Mr. Rowland in a station before he took over this new station, do you know? A. Yes, he was in a Sinclair service station.

Q. For how long a period, do you have any idea? A. I have no idea.

Q. Did you know him before he came in with Texaco? A. No, sir, I didn't know him personally.

Q. Where was your office at the time, Mr. Russell? A. My office was in Ardmore, Oklahoma.

Q. Ardmore? A. Yes, sir.

Q. And he was in Duncan? A. Yes, sir.

Q. How far is that from Ardmore? A. Sixty-eight miles.

A. G. Russell, for Respondents—Redirect

Q. And how often did you get to call on Mr. Rowland?
A. Well, not over once a month. Sometimes I might have skipped a month if I was real busy, but not over once a month did I ever call on him.

Q. And was he in that station one year while you were in that position in Oklahoma? A. I was in the same position the entire time he was in that station which was over a year, sir.

(6071) Q. About how long? A. Well, beginning December 1, 1955, that would be one month, and then all of 1956 would be twelve, that is thirteen; and then four months of 1957 would be seventeen months.

Q. And was he still in that station when you left? A. Was he in the station when I left?

Q. Didn't you leave the area? A. No, sir, I just had a change of title.

Q. I see, it is a change of title? A. Yes, sir, but the duties were the same.

Q. Did he leave the station? A. He sold out to another fellow.

Q. And that was when? A. He sold out—let's see—May 15, 1957.

. . .

Redirect examination by Mr. Lorenzen:

Q. In connection with this sale that he made, were you notified that he was going to make a sale and asked to see if the Texas Company would assign the lease to this new fellow that he got? A. Yes, I was notified that he had found a buyer and I immediately went over there.

Q. Did his finding a buyer come about as a result of your (6072) suggestion that he do so? A. No, sir.

Paul Hicks, for Respondents—Resumed, Direct

Q. The first you knew of it you were advised that he found a buyer, is that right? A. That is right, I was notified that he had found a buyer.

Q. And that was not at all as a result of your suggesting that he find one? A. That is right.

Q. This was something that he did on his own? A. Yes, sir.

. . .

(6073) PAUL HICKS resumed the stand as a witness on behalf of the Respondent and, having been previously duly sworn, testified further as follows:

Direct examination (resumed):

. . .

Mr. Royall: Paul Hicks is the name, and I believe you testified in Chicago?

The Witness: Yes, sir.

By Mr. Royall:

Q. Now, what position did you hold with the Texas Company in Chicago in the years 1955 to 1957? A. From 1955, 1956, and one month, January of 1957, I was a merchandising salesman in the Western Suburbs of Chicago.

Q. And thereafter? A. As of February 1, 1957, I was made district sales representative, South Chicago District.

Q. And what position do you hold now? A. I hold that same position now.

Q. Mr. Hicks, I think you have testified previously on this, (6074) but are you familiar with the TBA habits of the Texas dealers in the Chicago area? A. Yes, sir.

Mr. Dias: May that be restricted to his particular area, please, unless he knows the entire area?

Paul Hicks, for Respondents—Resumed, Direct

By Mr. Royall:

Q. I mean, in the two parts of Chicago in which you served, are you familiar with those? A. In my particular area?

Q. Is that part of your duties to be familiar? A. Yes, sir.

Q. From your knowledge, which you have previously testified about, and from your knowledge in general, is there a quantitative relation between the sales of gasoline and the sales of TBA? A. Yes, sir.

Q. Is there, for example, general quantitative relation between the sales of gasoline and the sales of batteries? A. Yes, sir.

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(6075) Q. Now, in your experience and confined, as counsel for the complaint has suggested, confined to those areas in Chicago which you served, what is the normal relation between gasoline mileage, we'll say, and sale of batteries?

(6076) Mr. Dias: Your Honor, I think if I understand the question, what is the normal relationship between gasoline mileage; is that correct?

Mr. Royall: Gallonage, I mean. Gallonage.

By Mr. Royall:

Q. What is it? A. I would say that it would be a figure between 1200 and 1800 gallons for the sale of one battery.

Q. Does that vary, of course, between those limits with individuals, does it, sir? A. Yes, sir; it does and it varies by station.

Q. Yes, sir.

Paul Hicks, for Respondents—Resumed, Direct

Now, do you know the stations in the areas which you covered run by Bernie Kolon, Lou Petting, Charles D. Curletti, Mr. McWhinny, and Russ Texaco Station; are you familiar with those? A. The stations?

Q. Yes. A. Yes, sir; I am with the stations.

Q. Does this relationship, which you have testified about, apply to those stations also? A. Yes, sir; that would apply to any stations in my area.

Q. Yes, sir.

(6077) Q. I refer to the testimony, your Honor, of Mr. Irving M. Channenson, who was connected with another distributor, on pages 832 and 833 of the transcript relating to Mr. Bernie Kolon in 1956.

The testimony of Mr. Channenson at pages 836 and 837 relate to Lou Petting; the testimony of Mr. Raymond P. Jennings, also connected with a competitive distributor, at pages 952 and 953 relating to Charles D. Curletti.

Do these three gentlemen whom I have named, Mr. Kolon, Mr. Petting, and Mr. Curletti carry non-sponsored TBA in their stations? A. Yes, sir.

Q. Was it visible to you? (6078) A. It was.

Q. Do you know how much gasoline gallonage Mr. Kolon had in the year 1956? A. Yes, sir; he did 122,900 gallons.

Q. Have you found how much Mr. Kolon spent on sponsored batteries in 1956? A. Yes, sir; in 1956, he bought \$208 worth of batteries.

Q. And from whom did he buy it? A. B. F. Goodrich.

Q. Did he buy any from Firestone? A. No, sir; he did not. Not that I have any records of.

Q. That information comes from the Form, S.79, which you have personally inspected; is that correct? A. Yes, sir.

Paul Hicks, for Respondents—Resumed, Direct

Q. How many batteries will \$208 buy? A. Well, in Chicago using—

Q. In these stations, what would it buy? A. Yes, sir; in my stations in Chicago, using \$15 as an average cost of a battery, it would buy approximately 13 batteries.

Q. And would that apply to these three stations I asked you about? A. Yes, sir.

Q. Now, have you figured out how many batteries under your previous testimony, have you computed at, say, 1500 gallons (6079) of gasoline, how many batteries would normally be bought by a station which had 123,900 gallons? A. Yes, sir; I have. The figure is 122,000 gallons and it would be approximately 80 batteries.

Q. Eighty batteries.

Now, you stated that Mr. Kolon had visible non-sponsored TBA. Do you recall in his specific case some of the items that were displayed that were not Firestone or Goodrich? A. Yes, sir. He had displayed Goodyear tires, tubes, Exide batteries, and Gates fan belts and hoses.

Q. Did you at any time tell Mr. Kolon he should those or conceal them? A. I did not.

Q. Did you tell him that he could not carry them? A. No, sir.

Q. Did you make any complaints or threats to him about them? A. No, sir.

Q. Did the fact that he carried these non-sponsored items in any way prejudice or work to his disadvantage in your relationship with him in the operation of his station? A. No, sir.

Q. Now, in the case of Mr. Petting, how much gasoline did he sell in 1956? A. He purchased—

Q. I mean, that he purchased. A. Yes, sir; he purchased 190,000 gallons, approximately (6080) 190,000 gallons.

Paul Hicks, for Respondents—Resumed, Direct

Q. And on the basis of the testimony you have given, what would the number of batteries which he would use, be?

A. That would represent approximately 125 batteries.

Q. Now, in 1957, how many gallons of gasoline did he purchase? A. He purchased in 1957 approximately 228,000 gallons.

Q. And how many batteries would that represent? A. That would represent approximately 150 batteries.

Q. Now, do your records show how many Firestone or Goodrich batteries Mr.—not how many batteries, how much money Mr. Petting paid for sponsored batteries in the year 1956? A. Yes, sir; in 1956, he bought \$567 worth of batteries.

Q. And how many batteries would that be? A. That would represent approximately 35 batteries.

Q. And how much did he spend for sponsored batteries in 1957? A. \$649.

Q. That would represent about how many batteries? A. Approximately 40.

Q. Now, as to his entire TBA shown on the S-79s and bought from Firestone and Goodrich, have you computed that on the basis of the gallonage which you have given, and can you tell us how many dollars per thousand gallons the total TBA for (6081) Mr. Petting was in 1956? A. Yes, sir; that would be approximately \$15 per thousand gallons.

Q. And how much for 1957? A. 1957, it would be approximately \$13 per thousand gallons.

Q. Now, in connection with Mr. Curletti, what was his 19—and that testimony, incidentally, referred to 1955; that is the testimony relating to him. The testimony of Mr. Jennings.

In 1955, what was the gasoline gallonage? A. Mr. Curletti purchased 196,725 gallons.

Paul Hicks, for Respondents—Resumed, Direct

Q. And how much did he spend for sponsored batteries during that year? A. He purchased \$582 worth.

Q. And in 1956, what was his gallonage and how much did he spend for battery purchases? A. In 1956, his gallonage was 219,285 gallons, and he purchased \$213 worth of batteries.

Q. I will not ask you to make those computations again because they are readily made, but I will ask you what type of battery did Mr. Curletti carry, principally; from your observation? A. Principally the Volta battery?

Q. That is not manufactured by either Firestone or Goodrich? A. No, sir.

(6082) Q. Were those batteries visible at all times? A. Yes, sir.

Q. Did you, in the case of Mr. Curletti, ever criticize, complain, or threaten him in connection with his purchase of those batteries? A. No, sir.

Q. And did you suggest to him at any time that they be not displayed? A. No, sir.

Q. Now, going rapidly to the others, give me the figures on Mr. McWhinny as to which the testimony related to 1955?

Mr. Royall: And that, your Honor, is at pages 956 and 957 of the transcript.

By Mr. Royall:

Q. (Continuing) What was his gallonage for the nine-month period in 1955? A. 91,825 gallons.

Q. And what was his purchase of sponsored batteries? A. In 1955, it was \$364.

Q. Now, as to Mr. Carl Olsen of the Russ Texaco Station, what was the gallonage for him? A. For Russ's Texaco?

Paul Hicks, for Respondents—Cross

Q. Yes. A. For 1956, the year which the testimony related to, at pages 870 and 871. In 1956, he purchased 137,100 gallons.

(6083) Q. And what was his expenditure for sponsored batteries during that year; that is, Firestone or Goodrich batteries? A. \$189.

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(6084) *Cross examination by Mr. Dias:*

• • •

Q. On what do you base your estimate of 1200 to 1800 gallons per battery, Mr. Hicks? How do you arrive at that figure? A. I would say through experience, sir, in talking to service station operators and counseling with them on batteries that they sell.

Q. Do you mean they keep track of the number of gallons they pump and then finally sell a battery, or is it computed on a year's average, or how do you arrive at that?

A. It could be computed on a monthly, a weekly, a yearly.

Q. In other words, at the end of the year you know how many gallons of gas they purchased from you and what do you do then? Do you go to the station and find out how many batteries they have sold during the year; is that the way you arrive at this? (6085) A. No, sir, it is not. In service station work, many times individual operators will ask our assistance. This matter of the battery ratio is just one of many things that we try to determine like that to help the operator.

Q. Well, that is the point. How do you determine what it is or what it should be? A. Well, he would tell us what batteries he sold so that we might help him to sell more in the future.

Q. Well, in other words, after he has told you the number of batteries sold, and knowing the number of gallons

Paul Hicks, for Respondents—Cross

of gasoline that he bought, then do you divide the number of batteries into the number of gallons or into the number of thousands of gallons and get out a figure and then suggest a higher figure for the following period? Is that what you do? A. I am not sure I quite understood that.

Q. All right. Well then, you tell me exactly how you decide that there should be one battery sold every 1200 to 1800 gallons. A. That is simply a rule of thumb figure that we use that we have gained from experience through many service station operators. The way it is determined, a service station operator would be talking to me about the sale of, we will say, batteries. And he would say, "I sold X number of dollars worth of batteries this month and I sold X number (6086) of thousand gallons of gasoline. Is my ratio of selling batteries as good as the average man in Chicago.

Q. And you do this with each service station in your area; is that correct? A. Do I do it with each one?

Q. Yes. A. No, sir, I don't do it with each one.

Q. Who compiles these figures? A. I compile some of them. My salesmen compile a lot of them.

Q. And they make these reports to you; is that it? A. No, sir, it is not a report. This is part of our sales presentation in our efforts to help our dealers. It is not a written form or—

Q. Well, if a dealer's sales of gasoline and batteries during a particular month equate to, we will say, one per 1200 or 1800 gallons, what is your advice to him? A. Well, if it was a good ratio we would tell him, "You are doing an excellent job on batteries." The average in Chicago is either higher or lower and his sales efforts should conceivably be placed along other lines.

Q. My point, though, is that there is never a fixed figure because as a salesman and promoting the sales of these products if a station reaches the normal we will say of

Paul Hicks, for Respondents—Cross

somewhere between 1200 to 1800 gallons per battery, am I not (6087) correct in assuming that your suggestion to him is that he attempt to sell one battery per every thousand gallons? A. For his benefit, yes, sir, absolutely.

Q. So that the figure, the basic figure of the thousand gallons of gasoline is ever adjusted downward in order to spur sales of the particular item that you are trying to relate to the sales per thousand; isn't that correct? A. It is possible, but it could also be revised upwards, also.

Q. In what way? A. Well, poorer dealers would have a much, much higher ratio per thousand.

Q. And you do say that this varies by individuals and by stations? A. Yes, sir.

Q. Now, what is the best ratio you can think of in your area during those periods? A. The best battery ratio?

Q. Yes. A. This is an estimate, but I would say that it would be one to possibly 900 gallons.

Q. And what was the poorest? A. Again an estimate, I would say one to possibly 3500.

(6088) Q. Now, do you run the same kind of study for tires? A. Yes, sir, we do.

Q. Will you tell me what brand of tires these various stations were handling, Kolon, Petting, Culetti, McWhinny, so on? A. Well, they handled a variety of them.

Q. Didn't they basically carry Goodrich or Firestone? A. They carried some Goodrich and Firestone, yes, sir.

Q. Well, can you tell me what their sales amounted to of the sponsored products? A. In tires?

Q. Of tires, yes? A. I don't have that right with me, I could get it for you, sir.

Q. How did you happen to hit on the ratio of battery sales to gasoline? A. I say, sir, we do this in all products, grease, oil, motor oil, tires, batteries.

. . .

Paul Hicks, for Respondents—Cross

(6089) Q. Now, as to each of these stations concerning which you have testified, Petting, what was your estimate again on the number of sponsored batteries that he had sold? You may refer to your notes. A. Thank you. In what year, sir?

Q. Give me each year that you have them. A. In 1956 he purchased \$567 worth of batteries from B. F. Goodrich.

Q. And in 1957? A. 1957 he purchased \$649 worth.

Q. All right, now, in each instance, Petting, Curletti, Kolon, McWhinny, do your records show how many dollars worth of non-sponsored batteries those stations sold? A. No, sir.

Q. So that you don't know definitely that he sold any others? Not he, but each of them. You can't testify from records that they sold other batteries? A. In some cases I could. I have actually been in some of (6090) these stations and seen batteries other than Goodrich and Firestone having been sold. In every case I could not.

Q. Well, as to those instances where you can, will you name them, please? A. Yes, sir, I have been in Curletti's station.

Q. All right, how many times have you seen him selling batteries other than the sponsored brand? A. I believe just once that I was personally standing there.

Q. Anyone else? A. No, sir.

Q. All right, now, can you testify that Curletti ever sold any more than that one non-sponsored battery? A. No, sir, I can't.

Q. And the same is true for each of these others; is that a fact? A. Yes, sir.

. . .

Paul Hicks, for Respondents—Redirect

H. L. Cain, for Respondents—Direct

Redirect examination by Mr. Royall:

Q. Mr. Dias brought out in his question that you visited these various station operators to be of assistance to them. Would that assistance include help in the sale of non-(6091) sponsored as well as sponsored merchandise? A. Absolutely.

. . .

(6092) H. L. CAIN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name and address to the reporter, please? A. H. L. Cain, 1402 Bluebird Lane, Garland, Texas.

Q. What is your position with the Texas Company? A. I am a dealer training representative.

Q. You are stationed in Dallas? A. Yes, sir.

Q. I don't know if we have had any explanation of what kind of a job that is. What do you do? A. Well, I travel the Dallas division primarily, holding meetings in the consignee areas for dealers, to help dealers to make more money.

Q. You say you have had that position since April 1958? A. Yes, sir.

Q. Before that what position did you have? A. I was a salesman in Dallas.

Q. During what years? (6093) A. July of 1952 to the time that I took this job.

Q. April of 1958? A. April of 1958, yes, sir.

H. L. Cain, for Respondents—Direct

Q. And you have been in several of the zones in Dallas, or territories in Dallas? A. Two salesmen's territories.

Q. Two salesmen's territories during that time? A. Yes.

Q. You came with the Texas Company in 1952, did you? A. No, sir. I came with the Texas Company in November, 1949.

Q. I see. What did you do between 1949 and 1952? A. I worked at the training station and in training with salesmen.

Q. Are you acquainted with the Texas Company's policy letters which have been marked Exhibits 27 and 28? A. Yes, sir.

Q. And 29? A. Yes, sir.

(Documents were shown to the witness.)

Q. And have you had a chance to look at these particular exhibits before you took the stand this morning? A. I have, sir.

Q. Have you followed the policy as set out in those exhibits during the time that you have been in the sales department of the Texas Company? (6094) A. I have.

Q. At any time while you were a salesman for the Texas Company did you suggest to any dealer that he would be prejudiced with the Texas Company in any way if he did not handle the Firestone or Goodrich TBA line? A. I have not.

Q. Have you ever recommended the cancellation of a dealer's lease or the non-renewal of a dealer's lease because he didn't buy the Firestone or Goodrich TBA line? A. No, sir.

Q. During the time when you have had contacts with the dealers, including now, has any dealer ever told you that he had been treated unfairly because of the way in which he was buying his TBA? A. They have not.

H. L. Cain, for Respondents—Direct

Q. Or complained to you that threats had been made to him to compel him to buy the Firestone or Goodrich lines? A. Never.

Q. Now, are you acquainted with Mr. Howard Rush?
A. Yes, sir.

Q. Who was a Texas dealer? A. Yes, sir.

Q. And for how long do you know he was a dealer?
A. Well, I don't know how long Mr. Rush has been a dealer, but I have worked with Mr. Rush. I worked with Mr. Rush (6095) starting July of 1952 through 1956.

Q. You were a salesman? A. Yes, sir.

Q. Did you have quite a few personal contacts with Mr. Rush? A. I did.

Q. Mr. W. E. Smith, who was a witness in this case and a salesman for the Beard and Stone Electric Company, testified about this dealer at Pages 1685 and 1693 to the effect that Mr. Rush is supposed to have told him that he was going to have to handle Goodrich products.

Now, at any time did you suggest directly or indirectly to Mr. Rush that he had to handle Goodrich TBA products?
A. No, sir.

Q. That he couldn't handle Auto-Lite batteries if he wanted to? A. No, sir.

Q. Or that he couldn't handle the Gates line of fan belts if he wanted to? A. No, sir.

Q. Did Mr. Rush ever tell you that anyone from the Texas Company had made any such suggestions to him?
A. He did not.

Q. Now, can you tell me from whom Mr. Rush bought his Goodrich TBA? A. He bought them from the service station supply, which (6096) is M. O. Rush, who is his brother. And, too, Howard helped his brother in this business.

Q. That is, the dealer Howard helped his brother, M. O., in the Goodrich business? A. In the supply of

H. L. Cain, for Respondents—Direct

Goodrich merchandise. And he also operated a service station and the supply point was approximately 1½ blocks from Howard's service station, Howard Rush's service station.

Q. So it is not surprising that he did handle quite a bit of Goodrich TBA? A. Not at all.

Q. And he did, didn't he? A. He sure did.

Q. Now, Mr. Jack Wilkie at 9507 Garland Road, do you know him? A. I sure do.

Q. And was he one of the dealers with whom you were associated while you were in the sales department of the Texas Company? A. He was.

Q. Now, the same Mr. Smith testified at Page 1692 that he tried to sell Mr. Wilkie batteries and that Mr. Wilkie didn't buy from him and said that he had to handle Firestone.

Now, did you ever suggest to Mr. Wilkie directly or indirectly that he would have to handle only the Firestone (6097) battery? A. I did not.

Q. Did you make any suggestion like that? A. No, sir.

Q. Did Mr. Wilkie ever complain to you that anyone from the Texas Company had said any such thing to him? A. He did not.

Q. Do you know whether Mr. Wilkie handled and had on display in his station any batteries other than Firestone? A. Yes, sir, he did.

Q. At this time do you happen to recall any of the names? A. Yes, sir, two of them. Continental and Auto-Lite.

Q. Now, how about tires? Did you happen to recall whether he had on display any tires other than Firestone? A. Yes, he had on display U. S. Royal tires.

Q. Now, did you ever tell this dealer that he ought to hide batteries that were not Firestone or tires that were not Firestone? A. I never did.

H. L. Cain, for Respondents—Direct

Q. Did you tell him that he would treat him badly in some way or threaten to cancel his lease if he didn't stop handling these other batteries and U. S. tires? A. No, sir.

Q. I believe I asked you, you said the batteries and tires were on display, did you not? (6098) A. In the sales room, yes, sir.

Q. As far as you know, did Mr. Wilkie continue handling and displaying these U. S. tires as long as you covered his territory? A. Yes, sir, he did.

Q. Now, Mr. Smith also testified that he tried to sell some batteries to Mr. Tableman, Russell Tableman, and he also said that he told him that he had to handle Firestone. That testimony is also at Page 1693.

Do you know Mr. Tableman? A. Yes, sir.

Q. Did you ever tell Mr. Tableman that he would be treated badly in any way if he didn't confine his purchases of TBA to Firestone? A. I did not.

Q. Do you know what Mr. Tableman did prior to becoming a Texaco dealer? A. Yes, sir.

Q. What did he do? A. He was a Firestone salesman for the area of Dallas.

Q. And after he became a dealer, did he handle Firestone? A. Yes, sir.

Q. Did Mr. Tableman ever complain to you that he had been told by anyone that he had to handle the Firestone products? A. He never did.

(6099) Q. Are you acquainted with a dealer by the name of Tosch, Ray Tosch, whose station is now at Preston Road and Berkshire in Dallas, Texas? A. Yes, sir.

Q. Mr. Kelly McCann of the Continental Battery Company testified at Page 1559 that this Mr. Tosch had been one of his best accounts in Dallas, that he began losing out on the Tosch account and that Tosch was discontinuing the use of Continental batteries.

H. L. Cain, for Respondents—Direct

Now, did you ever suggest to Mr. Tosch either directly or indirectly that he would be treated badly in any way, if he continued to purchase Continental batteries? A. I never did.

Q. Have you had occasion to visit Mr. Tosch's station?
A. Yes, while I was a salesman?

Q. While you were a salesman. A. Yes, sir.

Q. And on those visits, did you have occasion to note whether he was confining his display to Firestone or Goodrich TBA? A. He did not. He had several different kinds, all kinds of merchandise.

Q. Do you by any chance recall any of the brand names which Mr. Tosch had? A. Well, I recall Goodyear tires and I recall Continental (6100) batteries.

Q. By the way, these visits that you made to Mr. Tosch started in the very month that Mr. McCann was testifying, January 1957; is that right? A. That is right. I went into that territory January 1, 1957.

Q. And so it has been recently that you recall that he has been handling these other lines of batteries? A. Yes, sir.

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(6101) Q. Did you, when you gave me the names of other lines of batteries that he had, did you mention any batteries other than Continental? A. Well, I am not sure. I am sure of Continental, and there were other batteries—

Q. I see. A. —in his station.

Q. Other than Firestone or Goodrich, also? A. Yes, sir.

Q. Now, did you suggest to Mr. Tosch at the time that he ought to stop displaying Continental batteries and these other batteries? A. I did not.

Q. Did he continue to handle them as long as he was in your territory? A. He did, yes, sir.

H. L. Cain, for Respondents—Direct

Q. Do you know when Mr. Tosch became a Texaco dealer? A. I don't know the exact date. It was the spring of 1949.

Q. Are you acquainted with a publication known as "The Gasoline Retailer"? A. Yes, sir.

Q. Tell us what kind of a publication that is. A. Well, it is a publication more or less like a newspaper that is mailed to the dealer, all dealers all over the (6102) country, as I understand it. I have seen several copies in stations.

Q. It had a wide circulation in your neighborhood, did it, in 1952, in your industry? A. In Dallas, yes, sir.

Q. I show you a page from the January 2, 1952, edition of The Gasoline Retailer and ask you whether on that page you can identify the picture of Mr. Tosch? A. Yes, sir, I recognize Mr. Tosch.

Q. On the date of that publication, were Auto-Lite spark plugs in either the Firestone or Goodrich lines? A. No, sir. They came out at a later date.

Q. And Mr. Tosch was still a dealer when you went in there in 1957? A. Yes, sir. And still is.

Mr. Lorenzen: I would like to offer in evidence this page from The Gasoline Retailer of January 2, 1952.

(The document referred to was marked Respondent's Exhibit 75 for identification.)

Mr. Dias: Mr. Cain, when did you say you first moved into this territory, in which Mr. Tosch is located?

The Witness: The First of January 1957. January 1, 1957.

Mr. Dias: And how do you know when he started in this station?

H. L. Cain, for Respondents—Direct

(6103) The Witness: Because I was an employee of the Texas Company on Preston Road near Mr. Tosch's station and, as I said, I went to work for them in November of 1949. He was a dealer when I went in there.

Mr. Dias: You say you worked for Tosch or Rush?

The Witness: No, I worked for the Texas Company. We had a training station on Preston Road near Mr. Tosch's station.

Mr. Dias: Near his station?

The Witness: Yes, sir.

Mr. Dias: And when was that; what year was that?

The Witness: I went to work at that station in November of 1949.

Mr. Dias: And Tosch was in that station at that time?

The Witness: At that time, yes, sir.

Mr. Dias: I have no objection.

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(6104) *By Mr. Lorenzen:*

Q. Did Mr. Tosch at any time complain to you that anyone from the Texas Company had told him that he had to limit buying his TBA items to buying the Firestone or Goodrich line? A. No, sir; he never did.

Q. Are you acquainted with Mr. Billy Colgin? A. I am.

Q. Where is his station? A. It is in the Snyder Plaza Shopping area in Dallas.

Q. That is also in Dallas? A. Yes, sir.

Q. Mr. Kelly McCann of the Continental Battery Company testified at pages 1576 and 1577 with respect to this

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dealer that he also had been one of Mr. McCann's finest accounts but he doesn't any longer stock the battery. Apparently he started this discontinuance in 1954, 1955, and 1956. That is, according to the testimony.

Now, tell me, did you ever suggest to Mr. Colgin that he would be treated badly in some way if he bought Continental batteries? A. I did not.

Q. To your knowledge, did any employee of the Texas Company ever make any such suggestion? A. No, sir.

Q. Did Mr. Colgin ever complain to you that anyone had (6105) made a suggestion of that type to him? A. No, sir.

Q. Now, do you know what the gallonage was at Mr. Colgin's station in 1955 and 1956? A. Yes, sir; in 1955, his gallonage was 235,618, and in 1956, it was 210,107.

• • •

Q. Mr. Cain, in your experience have you found that there is a sort of a rule-of-thumb ratio between certain sales at service stations and the gasoline gallonage? A. Yes, sir.

Q. Have you found that to be so with respect to batteries? A. Yes, sir.

Q. Of course, individual sales will differ within a range depending upon location and upon the dealer; will they not? A. Yes, sir.

Q. But, nevertheless, you feel there is a rule-of-thumb of some kind? A. Yes, sir.

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(6106) Q. Let me ask you, while you were a salesman to what extent did you assist dealers who requested your help in connection with sales ratios? A. Well, oftentimes a dealer would say that he wasn't making enough money and would ask for our help, and that was (6107) our job to go in and assist him to sell more of all lines to make more money.

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Q. And did you do that? A. Yes, sir.

Q. In that connection, will you state to what extent you acquainted yourself with ratios of sales which the dealer might make in order to achieve that greater success which he was looking for? A. Well, I would make an effort along with the dealer to see what particular department his sales were down in, and if it were down in batteries, why, we would—of course, he would make an effort to sell more batteries.

Q. And if it were down in lubricating jobs would you do the same thing? A. Yes, of course, it was more or less departmentalized and that is the way most of them had their profit and loss statements made out and they would go to each department and see how their sales were doing.

Q. Now, in connection with that phase of your job— A. Yes, sir.

Q. (Continuing)—did you acquaint yourself with ratios of sales which might be expected from a certain amount of gallonage? A. In the Dallas area, yes, sir. I was there, as I said, about five and a half years working with dealers.

(6108) Q. All right.

Now, how many dollars did Mr. Colgin spend on Firestone or Goodrich batteries in the year 1955? A. \$370.

Q. And in the year 1956? A. \$290.

Q. About how many Firestone or Goodrich batteries could Mr. Colgin buy in Dallas in 1955 for \$370? A. Oh, estimating, about 27 batteries.

Q. And for the \$290 in 1956, about how many could he buy? A. About 20 batteries.

• • •

(6109) Q. You testified that in 1955 the gasoline gallonage was 235,618 gallons, did you not? A. Yes, sir.

Q. Now, for a station of that gallonage, approximately how many batteries would Mr. Colgin sell, applying to this

H. L. Cain, for Respondents—Direct

answer now your experience gained as you have testified to in connection with determining ratios? A. 27 or 28 batteries.

Q. That is what he did buy? Is that right? A. Yes.

. . .

Q. Now, I want to know, that is what you said he bought from Firestone and Goodrich; is that right? (6110) A. Yes.

Q. Now, with a station of that gallonage, what would be the ratio of total battery sales?

Mr. Dias: I object unless we give some ground for making this computation, I haven't got that yet.

Hearing Examiner Kolb: We don't have any information as to how many batteries this man bought. I don't think this witness is qualified to go into the ratio proposition. As a matter of fact, Mr. Hicks testified he took his ratio on the basis of what the Company had worked out, not on his, after you got into further testimony after I allowed the testimony to go in.

. . .

Q. Do you have a rule-of-thumb down there in Dallas as to the ratio of batteries to TBA? A. Well, we have an average that we go by.

Q. What is that? A. Oh, one battery to about every 1200 to 1800 gallons.

Q. Then, it is the same Company ratio that Mr. Hicks testified about? (6111) A. I don't recall what his testimony was.

Q. All right.

H. L. Cain, for Respondents—Direct

Now, based upon your experience in this particular neighborhood where this station is located, do you have an opinion as to the number of batteries which the average dealer would buy in terms of gallons of gasoline? A. Yes, sir.

Mr. Dias: That is enough. You have the opinion.

By Mr. Lorenzen:

Q. What is your opinion? A. I would say, as a figure, about one battery to every 1500 gallons of gasoline.

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(6114) Q. Did you look through in Colgin's books to see whether he bought batteries, and from what source he bought them? A. No, sir.

Q. Did you attempt to police him in any way as far as his TBA went? A. No, sir.

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(6116) Q. Now, did Mr. Colgin ever complain to you that anyone had told him that he had to buy more Firestone and Goodrich batteries? A. No, sir.

Q. That something—that he was threatened in any way if he didn't buy more of them? A. No, sir.

Q. Did he ever tell you that anyone from the Texas Company had told him that he couldn't handle the Continental batteries? A. No, sir.

Q. And you testified, I believe, that he did handle batteries other than Firestone and Goodrich? A. I did.

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H. L. Cain, for Respondents—Cross

Cross examination by Mr. Dias:

(6118) Q. Now, tell us again how you knew Tosch prior to January 1 of 1957? A. Well, as a salesman we had meetings and Mr. Tosch is an outstanding dealer and he made all of our meetings and he's quite a conversationalist and he talked a lot and everyone knew him in town.

Q. Did you call on him at his station? A. Yes, sir.

Q. How often? A. Oh, about three times a month while I was his salesman.

Q. Starting in January of 1957? (6119) A. Yes, sir.

Q. I am talking about prior to that time now? A. Oh, no. I have been in his station just visited with Mr. Tosch, but not at a business level.

Q. And was it at that time that you saw these Goodyear tires and Continental batteries or was that after January 1 of 1957 that you saw them? A. After January 1, 1957.

Q. You stated that you never have recommended the cancellation or non-renewal of a station operator's lease because he was handling non-sponsored TBA? A. I did.

Q. Have you ever recommended the cancellation or non-renewal of a lease of any operator for any reason? A. Yes, sir.

Q. All right, when was that and what was the reason? A. Well, the reason for gasoline gallonage being off is the number one reason or any petroleum product is the number one reason.

Q. And who was it and when? A. Well, during my—there is three or four that I can think of.

Would you like for me to name them?

Q. Yes, if you would, please? A. Well, a gentleman by the name of Glen Heath and Acock. (6120) That was his

H. L. Cain, for Respondents—Cross

last name, James Acock and Glen Heath, and they were dealers, partners in a station in McKinney.

Q. McKinney, Texas? A. That is right.

Q. How far is that from Dallas? A. Oh, approximately thirty miles.

Q. All right. Do you recall any others? A. Offhand I would have to check my records for the name.

Q. Well, was the procedure in each instance the same? How does the salesman go about recommending the cancellation or non-renewal of a lease? A. Well, I would say 99 percent of the time it is—they were poor businessmen and the gallonage was going down—

Q. No, but how do you as a salesman initiate this cancellation of a lease? Do you report to a superior or do you have the authority to just cancel them out? A. No, we visit, I visit with my superiors on it. We decide that he is not protecting the Texas Company's interests and not doing a good job in promoting the sale of petroleum products in the station.

Q. And what do you do then in regard to the operator himself? Do you notify him about your thoughts in this matter? A. I am right in thinking he is mailed a letter from our division office.

Q. And what is he told in that, that it is going to be (6121) cancelled or that he is— A. That his lease will not be renewed.

Q. That is the normal procedure, is it? A. Yes, sir.

Q. Is he told why it is not going to be renewed? A. Well, if he asks he would be.

Q. In connection with Jack Wilkie, you mentioned that he displayed Continental and Auto-Lite batteries? A. Yes, sir.

Q. How many of those did he have around, do you recall? A. Well, I couldn't recall that number, no, sir.

John Killips, for Respondents—Direct

Q. Did he also have Firestone or Goodrich batteries in that station? A. Yes, sir.

Q. In other words, he had three brands? A. Yes, sir.

Q. You mentioned that he had U. S. Royal tires, was that the only tire that he carried? A. No, he was a Firestone dealer.

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(6123) JOHN KILLIPS was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you state your name and tell us where you live?

A. My name is John Killips, 8025 Ogden Avenue, Lyons, Illinois.

Q. Are you an employee of the Texas Company? A. Yes, sir.

Q. Since when have you been an employee? A. About twenty years.

Q. About since 1938? A. Yes, sir.

Q. And where has your employment been geographically? A. From 1938 to about 1942 or 1943 I was at that time they call them resale salesmen in the Metropolitan Chicago area. From that time until 1949 I was a dealer service representative in that area, in the Chicago area.

(6124) From 1949 to 1952 I was zone manager in the Rockford, Illinois, area.

From 1952 to 1956 I was a dealer service representative in the Chicago division, which comprised about three or four states at that time.

From January 1, 1957, until August 1, 1958, I was district representative, merchandising, in the north area of Chicago.

John Killips, for Respondents—Direct

From August 1958 until this present November I was a dealer trainer in the Chicago area. And at the present time I am merchandising salesman.

Q. With the exception of that stay in Rockford, Illinois, all of your time has been spent in and about Chicago? A. That is true.

Q. And in the sales end of the business? A. Yes, sir.

Q. During the time that you have been employed by the Texas Company, have you from time to time received policy letters of the Texas Company dealing with TBA? A. Yes, sir.

Q. Are you acquainted with the letters which have been marked Exhibit 9? (Showing document to the witness.)

A. Yes, I am.

Q. And Exhibit 10? A. Yes.

(6125) Q. You have had a chance to look at these before you took the stand today? A. Yes.

Q. Now, in addition, did you receive a letter such as Exhibit 6, I believe it is—Exhibit 6? (Showing document to the witness.) A. Yes.

Mr. Dias: Respondent's Exhibit 6?

Mr. Lorenzen: Yes. These are Respondent's exhibit numbers.

By Mr. Lorenzen:

Q. Such as Exhibit 6—you did receive a letter like that? A. I never received a copy of this letter but I have seen this letter.

Q. I see.

Now, during the time that you were in the sales department and in contact with Texaco dealers, have you followed the policy of the Texas Company as set out in the exhibits I have shown you? A. Yes, I have.

John Killips, for Respondents—Direct

Q. Tell me what did you do as dealer service representative? What were your duties and just what did you do? A. As dealer service representative, it was—the dealer asked for the help of the dealer service representative in his overall merchandising picture to make sure that his (6126) ratios were good, to make sure that his profit picture looked good and that he was doing a balanced selling ratio job. By that I mean that he was selling—a balanced selling job.

Q. You mean it was your job to help a dealer when he asked for it? A. Yes, sir.

Q. They sent a man with your title, a dealer service representative, out to help the dealers? A. That is true. The dealer asked for our help.

Q. And when that was asked, then you were sent out by the zone manager? A. That is true.

Q. And you went and talked to the dealers and went over their merchandising problems? A. Right.

Q. That is the sort of thing you did? A. That is true.

Q. And you did that in Chicago? A. Yes, sir.

Q. For how many years did you say? A. Well, as I formerly stated, from about 1949 to 1952, and then I was back again as dealer service representative up until—from 1952 to 1957.

Q. And those are the sort of duties that you performed? (6127) A. Yes, sir.

Q. That is about what you did in the Chicago area? A. Yes, sir.

Q. In that connection, did the dealers ask advice on the basis of their own figures, their own books at times? A. Yes, sir.

Q. And did they ask you to analyze their books? A. That is right.

Q. Analyze their sales? A. Yes.

John Killips, for Respondents—Direct

Q. Tell us what sort of analyzing the dealers asked you to do. A. Well, the primary reason we were sent there, as I said, was to help the dealer make more money, make his profit picture a little better through a balanced selling job of petroleum products, TBA, sales and services.

Q. And you said they showed you figures at times. What did you do with the figures? (6128) A. Well, in order to analyze the man's business, in order to look at the profit picture, you had to work with the dealer. He worked with you to try to show him where he was low on lube jobs, maybe, or low in the lube bay, maybe, or the wash bay. He might be low on gasoline, oil sales, and we tried to round it out and do a balanced selling job for the dealer.

Q. Did your analysis have anything to do with the sale of TBA? A. It was a very big part of it.

Q. What was that? A. Well, to help them display merchandise, be sure that he had presented it right to the public, that he had the selling story to tell to the public in order to sell TBA, to display it and price it properly.

Q. If one of these dealers who asked for your services had on hand for display Dunlop tires or Auto-Lite batteries, would you help him just the same? A. We treated TBA as TBA. We treated it as a tire; we treated it as a battery. He had the merchandise on hand and, as I say, our job was to merchandise what he had and to make his profit picture look better.

Q. And did this balanced selling you are talking about have anything to do with the balance between TBA and gasoline? (6129) A. Yes, it did.

Q. Did you analyze that, too? A. Yes, on many occasions.

Q. On many occasions? A. Yes.

Q. In connection with the performance of this end of your job, did you have information as to the relation between TBA sales and gasoline sales? A. Yes.

John Killips, for Respondents—Direct

Q. And TBA and gasoline sales and battery sales? A. Yes.

. . .

Q. Did you acquaint yourself with the relationship between TBA sales and gasoline sales as part of performing your job? A. Yes.

Q. And did you know what that relationship was in the type (6130) of station you are dealing with? A. Yes.

Q. What was the relationship between gasoline sales and TBA sales?

Mr. Dias: I object.

Hearing Examiner Kolb: He hasn't yet told us how he knows.

By Mr. Lorenzen:

Q. Well, tell us how—I thought you had gone into it in some detail, but tell us how you know. A. Well, we had a mimeographed form we went by. We took a dealer's P&L statement and—

Q. That was in the case of the dealers who asked you to help them? A. That is right. And we would break down—well, there was only eight ways you could get money into a service station—gas, oil, lube, labor, tires, batteries, and accessories—and you broke those down and found out what the revenue in each department was and you had a pretty good idea what TBA should bring in.

Q. In these cases where the dealers asked you to analyze his figures, you had a mimeographed sheet along off which you could fill in those eight sources of income? A. That is true.

Q. Is that correct? (6131) A. Yes.

Q. And did you do that a substantial number of times or a few times? A. Many times in that capacity as a dealer service representative.

John Killips, for Respondents—Direct

Q. And when you did that that would show sales of gasoline in one line? A. Yes.

Q. And sales of lube jobs on another line? A. Right.

Q. And sales of tires on another line? A. Right.

Q. And sales of batteries on another line? A. Right.

Q. And sales of accessories on another line? A. Right.

Q. And you will have that just in dollar figures? A. That is right.

Q. So that comparing any one of those lines with the gasoline gallonage, you could find what the relationship was? A. That is true.

Q. And you did that, you say, on a great number of occasions? A. Yes. Also—

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(6134) Q. What relationship did you find existed between gasoline gallonage and TBA at these stations? A. Gasoline gallonage was good, TBA sales were usually good.

Q. And what did you find the relationship between dollars of TBA and gallons of gasoline to be? A. In the particular area that I was in at that time, I would say between, oh, 50 to 60 dollars per thousand.

Q. And did you find any similar relationship between battery sales and gasoline gallonage? A. Yes, I did.

Q. What was that? A. Where you had increased gallonage you had increased battery sales.

Q. And, again, did you find there was a dollar relationship between battery sales and gasoline gallons? A. Yes.

(6135) Q. What did you find that to be? A. Oh, I would say, about \$25. It may be a little high—

Mr. Dias: Wait. You have answered that.

John Killips, for Respondents—Direct

By Mr. Lorenzen:

Q. I am no expert in this field, could you translate that for us into number of batteries other than dollars? A. Breaking it down per thousand gallons of gasoline?

Q. Any way you want, so we know what it is. A. Well, your stations vary from good TBA merchants to fair TBA merchants to excellent TBA merchants, but I would say that a fair estimate of one battery, oh, in a range from 1250 gallons to 1800 gallons there should be one battery sold.

Q. During the time when you were in the Chicago area, were you acquainted with a dealer by the name of Robert W. Stern? A. Yes.

Q. There was testimony about this gentleman given by Mr. Dwyer on pages 923 to 925 of the record. Do you remember was there a time when this Mr. Stern was in the station without a lease? A. Yes, I do.

Q. Do you remember, was he sent a letter saying his lease would not be renewed? A. Yes.

Q. And then what happened? A. He stayed in the service station.

(6136) Q. Were you out looking for a dealer to replace him? A. We tried to find a dealer for it; yes, sir.

Q. Could you find one? A. No, sir.

Q. And, so, Mr. Stern stayed on? A. He has been there; yes, sir.

Q. And he has stayed ever since, has he? A. Yes, he has been.

Q. Now, do you remember about when that happened? About how long ago was that? A. I think it was, if my memory serves me right, right around the year of 1954.

Q. Now, before that time, had you been in Mr. Stern's service station? A. Yes, I have.

Q. On more than one occasion? A. Yes.

John Killips, for Respondents—Direct

Q. It was in connection with your dealer service job?
A. That is true.

Q. Did you help him with his TBA displays and what not? A. Yes, I did.

Q. What kind of TBA did he have in there, do you remember? A. If I recall, he had some Firestone and he had Dunlop tires and Exide batteries.

Q. And how about his accessories? (6137) A. He had various lines of accessories.

Q. Lines in addition to or other than Firestone or Goodrich? A. That is true.

Q. Now, did you see—were you in Mr. Stern's station after the time when you were looking for another dealer and couldn't find one for that station? A. Yes, I was.

Q. How about Mr. Stern's TBA displays at that time? A. I didn't notice any difference in them. I think they were the same as they were before.

Q. You mean, the same line of merchandise that he had in there before? A. That is true.

Q. Do you have the figures of gallonage at Mr. Stern's station in 1956? A. Mr. Stern's gallonage in 1956 was 134,725 gallons.

Q. Do you have it for 1955? A. I am sorry, I do not.

Q. You do not? A. No.

Q. How about purchases of Firestone or Goodrich batteries, do you have those for 1956? A. There were no B. F. Goodrich sales at all. Firestone batteries in 1956 were \$318.

Q. Now, do you happen to have for the same year his total (6138) TBA purchases? A. His total purchases were \$283.

Q. That is Firestone and there were no Goodrich; is that right? A. That is right.

Q. The conversation which the Government's witness, Mr. Dwyer, said somebody else told him Mr. Stern was

John Killips, for Respondents—Direct

supposed to have had with somebody from the Texas Company, supposed to have been with a Mr. Suffert; now, that gentleman died, did he not, before January, 1957? A. If I recall, he died in November of 1956.

Q. And this testimony was in January, 1957, so you are quite sure he was deceased at that time? A. True.

Q. Were you in Mr. Stern's station ever in company with Mr. Suffert? A. On several occasions I was in the station with Mr. Suffert.

Q. Now, during those occasions, did you hear Mr. Suffert say anything to Mr. Stern about his having these Dunlop tires and other lines of TBA in the station? A. I did not.

Q. Did you hear any threat whatever being made by Mr. Suffert that he would cancel out Mr. Stern's lease if he didn't stop handling these Dunlop tires and Exide batteries? (6139) Did you ever make any threat like that to him? A. No.

Q. Did Mr. Stern, at the time you were helping him with his TBA after that date, ever complain to you that Mr. Suffert or anybody else had made a threat to him about his TBA? A. No.

Q. And you stated that the type and proportion of TBA that he handled both before and after the time when his lease was cancelled was about the same? A. Yes.

Q. As far as you could observe? A. Yes, true.

Q. By the way, did you ever hear of a Goodrich dealer by the name of Bablum? A. No, sir.

Q. Now, were you acquainted with a Mr. Andrew Gumbbar? A. Yes, I am.

Q. And do you know about where was he a Texaco dealer? A. Yes, sir; at Bryn Mawr and Ashland.

Q. What was the name of the other street? A. Bryn Mawr and Ashland, it is 5556 North Ashland.

John Killips, for Respondents—Direct

Q. I see, because the address we had in the record was 5550 North Ashland. That is about the same place? A. Yes, that is the same corner.

Q. What was your connection with Mr. Gumbar? Was he in the (6140) territory where you were functioning?

A. Yes, when I was district representative for merchandising he was in that area.

Q. And at any time, did you ever tell Mr. Gumbar that he had to buy only Firestone or Goodrich batteries? A. No, sir.

Q. Did you ever tell him that he should stop buying Auto-Lite batteries from Mr. Francis Dwyer, a salesman of the Berry Tire Company? A. I did not.

Q. The testimony to which I have reference is found on page 925 of the record.

As far as you know, did anyone connected with the Texas Company ever tell Mr. Gumbar that he had to buy all of his TBA from the Biltmore Tire Company? A. No, sir.

Q. Did Mr. Gumbar, when you saw him, ever complain to you or tell you that anyone from the Texas Company had told him that he had to buy only from Biltmore, or that he couldn't buy from the Berry Tire Company? A. No, sir.

Q. Or that he would be treated badly in some other way if he didn't buy only Firestone and Goodrich TBA? A. No, sir.

Q. He never told you that? (6141) A. No.

Q. Did you ever tell him anything like that? A. No, sir.

Q. Did you ever suggest to him that his lease might be cancelled if he didn't buy only the Firestone or Goodrich TBA? A. No, sir.

Q. By the way, was the cancellation of that lease of Mr. Stern's, did that have anything to do with TBA at all? A. Are we going back to Mr. Stern?

John Killips, for Respondents—Direct

Q. Yes, I think I might have forgot then to ask you. Did that have anything to do with it? A. No, sir; the only time when I mentioned before I was accompanying Mr. Suffert on this visit there several times, Mr. Suffert did council with him and speak with him about the unbusiness-like physical condition of the service station. It was not conducive to good business practices and we thought that the gallonage was going down and eventually it would go down so low that Mr. Stern would be unable to make a living there.

Q. Was that a nice neighborhood? A. It was an excellent neighborhood in Winnetka, if you know the neighborhood, good area, north shore.

Q. Residential suburbs of Chicago? A. Yes; but it was the housekeeping there that Mr. Suffert (6142) councilled him about.

Q. He kept a dirty operation? A. Yes.

Q. Now, let's get back to Mr. Gumbar a minute here. Do you recall on your visits to Mr. Gumbar's station whether you saw anything on display there other than Firestone or Goodrich? A. He had non-sponsored merchandise on the premises.

Q. Do you remember any particular brand at all? A. There were either Auto-Lite or Exide batteries, I can't recall vividly which one. They were either one or the other.

(6143) Q. Now, what about the tire situation here? What was his stock of tires, if any? A. Mr. Gumbar stocked very little tires there, he was more or less on a pickup basis on a tire program there. If he needed a tire why, he would pick it up at the supply point.

Q. Now, do you have the figures for Mr. Gumbar's gasoline gallonage for 1956? A. Yes, sir, he did 158,460 gallons in 1956.

Q. And what were his total TBA purchases of Firestone and Goodrich, if he bought both? A. Total figure was \$1,569.

John Killips, for Respondents—Direct

Q. That is all Firestone or Goodrich TBA? A. Yes, that is true.

Q. And how about batteries?

Can you tell us what his total battery purchases were for 1956 for Firestone or Goodrich? A. \$338.

Q. Now, was a dealer by the name of Harry F. Peterson in your territory at any time? A. Yes, he was.

Q. And where was his station located? A. Irving and Hermitage, 1700 West Irving Park Boulevard.

Q. That would be 1723 Irving Park Road? A. Yes, we carried it on the records as Irving and Hermitage, I think because of the corner.

(6144) Q. He was in your district when you were district representative, right? A. Right.

Q. Now, did you ever tell this gentleman that he was not to buy anything from the Berry Tire Company except vulcanizing and recapping? A. I did not.

Q. To your knowledge did anybody from the Texas Company tell him that? A. Not to my knowledge.

Q. Did Mr. Peterson ever tell you that such a statement had been made to him by anyone? A. No, he did not.

Q. Did he ever complain to you that he had been told that he had to buy only Firestone and Goodrich? A. No, he didn't.

Q. Or that he was told that he couldn't buy things from the Berry Tire Company? A. No, sir.

Q. Now, the same Mr. Suffert who died in 1956 was also the manager in charge of the zone in which Mr. Peterson's station was located; is that so? A. That is right, prior to my time, yes, sir.

Q. Did you see this station? Did you observe it? A. Yes.

(6145) Q. How many times were you there do you think? A. In a given year or month or—I would say I was

John Killips, for Respondents—Direct

there, oh, once every two months. I rode the territory with the sales personnel that were in that area and I would have to be there.

Q. Do you recall whether you saw any brands of TBA there other than in the Firestone and Goodrich line? A. Yes, he had a non-sponsored brand of batteries there and non-sponsored accessories.

Q. Tell me, do you have this gasoline gallonage there for any years, 1956, for example? Have you got it? A. I have his gallonage for 1956, it was 169,380.

Q. Now, have you got gasoline gallonage for any other years? A. I have 1954, 1955 and 1957. 1954's gallonage was 171,305; 1955's gallonage was 117,980; and 1957's gallonage was 164,365.

Q. Now, in 1954 can you give me the total TBA purchases of Firestone and Goodrich made by this dealer? A. 1954 it was \$499.

Q. And in 1955? A. \$733.

(6146) Q. And in 1956? A. \$680.

Q. And in 1957? A. \$419.

Q. Out of that amount did he buy any batteries? A. There were no batteries in that figure.

Q. Did he buy any accessories? A. No, there were no accessories in that figure.

Q. So all this fellow bought was this few hundred dollars worth of tires? A. That is true.

Q. From Firestone or Goodrich? A. Right.

Q. Now, have you got the TBA ratios there to save us the arithmetic, that is \$3.50 per thousand gallons, is it for 1954 and \$4.30 for 1955? A. That is true.

Q. And \$2.55 for 1957. Have you got the '56 computed, too? A. \$4.01.

John Killips, for Respondents—Direct

Q. \$4.01? A. Yes, sir.

Q. That was the total TBA that this man bought? A. That is correct.

Q. From Firestone and Goodrich? A. That is right.

(6147) Q. Have you been to Mr. Peterson's station recently? A. Within the last month I have been there.

Q. What did you find on display there then as far as batteries went? A. There wasn't much change than it had been on my previous visits.

Q. As of that time do you remember the makes of the batteries he was carrying? A. I would say that, like before, either Exide or Auto-Lite batteries in there.

Mr. Dias: Your honor, I object to the answer, the witness would say that. I would rather hear what was actually there, what he actually saw.

The Witness: They were either Auto-Lite or Exide batteries.

By Mr. Lorenzen:

Q. Now, did you have a dealer by the name of Feller, did you know him? A. I sure did, yes, sir.

Q. What was his address? A. We carried it as Irving and Mozart. I think it was in the 2800 block on Irving Park Boulevard.

Q. That would be the same fellow as 2834? A. That is right.

Q. Now, there was some testimony about him by Mr. Theodore (6148) H. Shiff, a salesman of the Berry Tire Company on Page 931 and in this testimony he states that in the Fall of 1956 Mr. Feller had ordered some Prestone from him and when he came around to deliver it in November that Mr. Feller turned down this Prestone and wouldn't accept delivery.

John Killips, for Respondents—Direct

He said that he wasn't permitted to handle it.

Now, what I want to know is did you tell him, Mr. Feller, that he couldn't handle Prestone? A. No, sir.

Q. Did you ever tell him that he couldn't handle any kind of TBA? A. No, sir.

Q. Did you ever tell him that he had to buy only from Firestone and Goodrich? A. No, sir.

Q. As far as you know did any employee of the Texas Company to your knowledge ever tell him anything like that? A. No, sir.

Q. Did Mr. Feller ever complain to you that anybody had told him he had to limit his purchases of TBA to any particular source? A. No, sir.

Q. Or that he couldn't buy anything he wanted to from the Berry Tire Company? A. No, sir.

(6149) Q. Now, as a matter of fact, this antifreeze isn't really in this TBA picture. The Texas Company has its own antifreeze, doesn't it? A. Yes, sir, we have an Ethylene Glycol permanent type antifreeze.

Q. Called PT? A. That is right.

Q. And that is what you as a salesman try to sell if you can succeed? A. That is right.

* * *

(6150) Q. Now, did you have occasion—now, this testimony states that this difficulty took place in November of 1956. Now, did you have occasion to visit Mr. Feller's station for any particular subject in the late winter of 1957? A. I had a very good reason. He had a tank that was leaking. I think it was in March, the early part of March, March 6 to be exact. I can remember it well because you don't drop a four-thousand gallon tank in without remembering the date. It is a pretty big undertaking and at that time I was there with the superintendent of

John Killips, for Respondents—Cross

maintenance and myself and the construction man and I had been in the station at that time.

Q. And at that time, what if anything, did you observe about the display of antifreeze that Mr. Feller had? A. Well, at that time he had a nice mass display of a (6151) non-sponsored, Zerex was the product in his sales windows or his display windows.

Q. And Zerex, that is not your Texas antifreeze? A. No, it is not.

Q. Is it either Firestone or Goodrich antifreeze? A. No, it is not.

(6154). *Cross-examination by Mr. Dias:*

Q. Is that the only time you visited the station, when they asked for your services? A. No, I might be riding with a salesman and there was a problem he might have in one particular station. We might have stopped off at a station and discussed maybe outside displays or lube or circle service.

Q. In other words, you would volunteer your services in some instances; is that it? A. If they were needed, yes.

Q. How often did you make the rounds of the various stations in the territory? A. Well, in that period, sir, when I was in the Chicago area, I would say, oh, three times a year I could make them. But when I was covering the larger area, maybe one or one and a half times per year.

Q. During what period was it that you got around to each of the stations three times a year and when was it that you got around one and one half times? A. That was that period from 1952 to 1956 that I got to them the lesser amount.

Q. Only once a year? A. Yes, sir. Now, you are speaking of all service stations, right?

John Killips, for Respondents—Cross

Q. Yes, all Texaco stations. (6155) A. Right.

Q. When in 1956, incidentally? A. Well, I completed the whole year in 1956 as a dealer service representative and on January 1st, when we started a new plan, I was district representative, merchandising.

Q. Then, actually it was after you changed your position or the title. Which was it, a change of position or title? A. Change of position and title.

Q. Change of position and title. From January of 1957 on how often do you get around to see the dealers? A. I would say, sir, at least once a month.

Q. So that during the course of a year you would get to see the dealer each and every dealer in your territory how often? A. Oh, ten or twelve times a year.

Q. Ten or twelve times a year.

In your current position are your services also requested or do you just go around in the regular course of your business? A. I don't follow you.

Q. Well, during the time that you were dealer service representative, as I understand it, you went to see the dealers only when they requested your services. A. That is true.

Q. What is your current title? (6156) A. I am merchandising salesman at the present time.

Q. As a merchandising salesman, you call on them regularly? A. Yes, sir.

Q. They don't ask for your services, you call on them regularly? A. Yes, sir, that is true.

Q. What was Mr. Suffert's position when you visited Stern? A. He was a zone manager in the north side of the city of Chicago at the time.

Q. And was Stern's station operated as Bob's Texaco? A. Yes, sir, Bob Stern. I think it is Robert W.

Q. What was Mr. Suffert's position in relationship to your position? A. Well, you could say that the dealer

John Killips, for Respondents—Cross

service representative was in a sales promotion capacity where Mr. Suffert as the zone manager had the overall sales picture and I was working in that zone along merchandising lines.

Q. Were you under his supervision? A. No, I wasn't, sir.

Q. You were separate and distinct? A. Right, sir.

Q. What was the occasion then for the two of you to call on Stern? A. Well, in our business we ride together once in a while to take a general view of service stations to see how they (6157) look in comparison to our competition and a lot of times two heads are better than one to see what is wrong and that was the occasion and I was with Mr. Suffert at that time.

Q. And how many times did you call on Stern, you personally? A. Twice.

Q. Twice? A. That is during the dealer service period.

Q. Yes. A. That is true, sir.

Q. Did you call on him alone on each of those occasions? A. Yes, I did.

Q. And did he request your services? A. Yes, he did.

Q. What was his problem? A. Well, again it is the profit picture. I mean, the dealers are in there to make money and they were trying to make as much money as they could and our whole job as dealer service representative was to try to get that balanced selling ratio and get as much money as we could for the dealer.

Q. And he requested your services, is that correct, on each of the two occasions? A. Yes, sir.

Q. And was one of those occasions that you visited him the time that Mr. Suffert was along with you? (6158) A. No, that was a separate occasion.

Q. So then you actually visited Stern on three occasions; is that correct? A. By "visits" I thought you

John Killips, for Respondents—Cross

meant—when I was a dealer service representative I usually spent the whole day there and called that a visit. When I was with Mr. Suffert that time I think we spent at the most a half hour there. It was just a—

Q. Can you recall what the occasion was or reason for calling with Mr. Suffert? A. I think in going by the service station, it was the unbusinesslike physical appearance of the service station that it was not inducive to good business and I think it was—it wouldn't be inducive to the type of people that live in that area to drive into that service station. If I recall there were a lot of older parked cars to the south of the station along the railroad tracks there and blocking the view of the station making visibility very bad and that was the reason for stopping.

Q. Was that the reason for two of you calling on him? A. Well, we just happened to be together at that time.

Q. You mean in the same car making the tour? A. Yes, sir.

Q. And how often were you with Mr. Suffert, when calls were made on this station, Bob's? (6159) A. Well, my two regular visits that I made. And I worked with him the whole day, sir, I was there myself.

Q. And then there was this one occasion at least that you called with Mr. Suffert? A. That is true.

Q. Was there any other occasion that you called with Mr. Suffert? A. No, there wasn't.

Q. And you were with Mr. Suffert at that station for a half hour; is that right? A. I would say in the neighborhood of a half hour.

Q. You both talked to Bob at the same time, did you? A. At that time I didn't do much talking. I was listening to Mr. Suffert counsel with him.

Q. And you were there during the entire stay; is that correct? A. Yes, sir.

D. B. Underhill, for Respondents—Direct

Q. Did you give us Stern's gallonage? A. Yes, sir.

Q. For 1956 you had it. Did you have it for other years? A. No, I don't have it for the other years. I only gave the gallonage for 1956 and that was 124,725.

Q. You also mentioned that in that year his total TBA amounted to \$2,000; is that correct? A. That was his total Firestone purchases. It was \$2,083.

(6160) Q. And your figures show, do they, that \$318 of that was batteries? A. In 1956, yes, sir.

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(6165) D. B. UNDERHILL was called as a witness on behalf of the Respondent and, having been previously duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Mr. Underhill, you have testified before? A. Yes.

Q. Mr. Dias called you in Omaha? A. That is correct.

Q. I suppose maybe you better, however, give your full name and address again, just to be sure it is in the record.
A. D. B. Underhill, 1407 South Fairfax, Denver, Colorado.

Q. Mr. Underhill, are you an employee of the Texas Company? A. Yes, sir.

Q. Did you receive copies of these documents, Exhibits 14, 15, 16, and 17? A. Let me take a little closer look, I didn't get a chance this morning.

(Documents were handed to the witness.)

A. (Continuing) Yes, I am familiar with these.

Q. During your time when you have been employed by the Company and since the date of these exhibits, have you followed the policy and program of the Texas Company as outlined in (6166) those exhibits? A. Indeed I have.

D. B. Underhill, for Respondents—Direct

Q. Do you ever talk with the men about the policy of the Texas Company that its dealers are independent businessmen and entitled to buy their TBA wherever they want?

A. I believe that every dealer I ever talked to, I brought that out very plainly.

Q. What was the occasion for doing it? A. Well, I find that to be one of my best selling tools.

Q. How do you figure that? A. In talking with a dealer whether it be installing a new dealer or just on a regular routine call on any dealer, I point out to him that it is his money, that he is going to spend it wherever he wishes, however he wishes, that is in line with our policy, that is the way the Company would want him to do.

And I find that that type of approach enables me then to get into a discussion of non-sponsored merchandise that he might have in stock, it enables me to get into a discussion concerning prices of merchandise that he is buying, it just paves the way for a good open discussion. It is a good selling tool.

Q. And you find you use that regularly? A. Invariably.

Q. Now, what is the extent to which you get contact with (6167) dealers? You have got a division job, haven't you? A. Yes.

Q. And do you get to see dealers quite a bit? A. Call on them all the time. No specific dealer and no specific route. Wherever I might happen to be going and in whatever area I am working. In order to learn of the problems you have to start with the dealer. So a call on any number of dealers in any given area is indicated.

Q. About how many actual calls on dealers do you say you make up there in that Denver division a year, let's say a year? A. Several hundred.

Q. And you have been doing that right along ever since you have had this position as TBA representative? A. That is correct.

D. B. Underhill, for Respondents—Direct

Q. During those calls, have any dealers ever told you, especially when you have made this opening move that you have been telling us about, that they had been given to understand the Texas Company policy differently by the local people with whom they dealt? A. I have never had that happen.

Q. Has any dealer ever complained to you that his local salesmen or zone manager has told him that he had to buy either the Firestone or the Goodrich TBA? A. Oh, no, sir.

(6168) Q. Did the dealers to whom you talked about this Texas Company policy ever tell you this was the first time they had heard any such thing? A. No, that hasn't happened either.

Q. By the way, since this litigation was brought by the Federal Trade Commission in January of 1956 and the time of the testimony out there in Omaha, the Government asked for quite a bit of TBA information for the Omaha-Lincoln area, were you the one who was delegated to get that? A. Yes, I think I handled most all of that.

Q. Now, in that connection, did you call on the dealers in the Lincoln and Omaha area? A. I have seen all of them several times in this regard.

Q. And that was before there was any testimony in 1957 as to any complaints with respect to any particular dealers? A. That is true.

Q. Did you compile the figures that the Government wanted as to the TBA sales in the Lincoln and Omaha area? A. Reams of it.

Q. And in that connection you asked the dealers, did you, for the information which enabled you to give the statistics as to how many bought Firestone and how many bought Goodrich and that they bought from other sources? A. We went directly to the dealers and they gave us the figures, probably in most instances they just dragged out

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(6169) their books and opened them up and we all went over them.

Q. And you found there, did you not, as the exhibits show, that substantially all of the dealers bought from sources outside of the Firestone and Goodrich, at least to some extent? A. Oh, all of them did.

Q. Now, did the dealers show any reluctance in showing you the books which showed their purchases from outside sources? A. None whatsoever.

Q. Did you threaten any of the dealers or did anyone with you threaten the dealer with respect to his TBA purchases when they found out that he bought a lot some other place? A. No, sir.

Q. As far as you know, the dealers still continued the same way? A. I am sure they did.

Q. You have seen a lot of them since in 1957, haven't you? A. Most of them.

Q. Do you know of any that made any drastic change in policy, by that I mean, stopped buying from outside sources and went to Firestone and Goodrich after your visit? A. No, sir.

Q. Now, was Mr. Victor Wager one of the dealers in Omaha upon whom you called? (6170) A. Yes, Victor Wager was one of them.

Q. Now, Mr. Olsen of the Sidles Company testified at pages 1323 and 1324 that he didn't sell any filters to Mr. Wager and that Mr. Wager told him he was under some kind of an obligation from or to his oil company in that connection.

Now, did you ever tell Mr. Wager that he had an obligation not to buy filters from the Sidles Company? A. Oh, certainly not, and I don't understand that because obviously that record that he was buying substantial quantities of all types of merchandise from the Sidles Company—

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Q. And did Mr. Wager make any statement to this effect to you when you went to talk to him in 1956? A. Yes, indeed. In fact his records show that he—

Q. Was buying— A. (Continuing)—averages about \$1200 a year from the Sidles people. He buys, as I recollect it, about \$300 worth from the Anderson people, and about \$1200 worth per year from other non-sponsored sources. A total of about \$2700 worth of merchandise other than Goodrich which is his primary line.

Q. Now, did you ever talk to Mr. Wager about the Texas Company's TBA policy? A. Yes, indeed; I didn't make an exception of anyone and he certainly was told; however, it wasn't necessary, he was already well aware of our policy.

(6171) Q. Are you familiar with something known as a Basic Dealer Conference held by the Texas Company? A. Yes, our Five-Day Basic Conference, training conference.

Q. What is that about? A. It covers all phases of service station activity, it is designed to help the dealer set up his station properly, to get the most out of his station. It is to help him in all phases of sales, records, expenses, help, so on. It covers every phase of the service station business.

Q. Are all Texaco dealers invited to attend these conferences? A. Yes, indeed.

Q. Do some of them do it? A. A great many of them do.

Q. Have you, yourself, participated in these dealer training conferences? A. Yes, I have attended a number of them and I have handled the TBA portion of several of them.

Q. In connection with that attendance of the TBA portion, do you recall whether there is any reference to the

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Texas Company's TBA policy? A. It is brought out quite forcefully that the dealer can buy from whomever he wishes.

It is recommended and suggested to him that he handle a well-known, nationally-known brand, and it is suggested (6172) that he do so, but it specifically states that he shall make his own decision as to what he handles.

Q. That is not kept a secret from the dealers at these conferences? A. Definitely not. Incidentally, in that particular conference there isn't any word, nothing is ever said of either Firestone or Goodrich in that entire conference.

Q. But do you know how the Firestone and Goodrich companies invite, if they want to put up a display of their merchandise at the time those conferences are held? A. That might or might not be the case. In some instances possibly they have. I have never sat in on one where that was done. I see no reason why that couldn't be done, and it may have, I couldn't say.

Q. Does the leader of these conferences have a booklet which tells him what to say? A. In this particular conference it is most specific that he follow a script, and there is an admonishment in it, "No ad-libbing".

Q. That has been going on for quite a while, has it? A. Oh, yes, sir.

Q. Before 1956? A. Oh, yes; many years.

Q. I happen to have the 1956 book here because we forgot to revise the one of the years before. Can you look at the (6173) TBA section of this book and tell me if so far as you can recollect that is substantially the sort of discussion set out in this book was delivered by the leader at the time when you attended these conferences? A. Yes, this is it. There is no question about it.

Q. And that has been going on for some years before 1956? A. Yes, many years.

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(6175) Q. In connection with this five-day dealer conference, how do the dealers know about these conferences?

A. They are invited to them.

Q. And do all dealers attend them? A. Not all of them. I think probably most all of them, possibly all of them have attended at one time or another.

The principal purpose of this conference is to take the (6176) brand new dealer and acquaint him with the Texas Company and his new service station.

Q. And is it a five-day continuous thing from morning through afternoon? A. Yes.

Q. Who minds the store? A. He isn't in the station in most instances when this conference is held. Although he might be there he might wish to go back, some of them having gone through that two or three times.

Q. Well, in other words, then, he has to leave his business to attend these conferences? A. That is correct.

Q. Did Mr. Wager ever attend one of these basic dealer conferences? A. Yes, he did. He attended the week of June 24 to 29, 1956.

Q. Now, during the time when you called on Mr. Wager what did you notice with respect to his display of TBA? Was it (6177) limited to the Firestone and Goodrich line? A. He handled the Goodrich line primarily, but as is the case with all our dealers he had a great many non-sponsored items of merchandise. He had Delco batteries prominently displayed there, he had the full line of Gates belts and the Gates hoses, the AC spark plugs, and any number of others.

Q. And did he ever tell you that anyone had told him he had to stop displaying those lines that were not in the Firestone-Goodrich line? A. No, no one ever told him that, and he still handles them.

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Q. Now, do you know a Mr. Stanley E. Coback? A. Yes, I am acquainted with Mr. Coback.

Q. And was he a dealer for a while in Omaha? A. Yes, he was.

Q. And did you call on him, too? A. Yes, I have called on him.

Q. Now, do you know whether Mr. Coback ever attended one of these dealer conferences? A. As a matter of fact, Mr. Coback attended the conference before ever becoming our dealer.

Q. When was that? A. He attended this five-day basic conference, it was the week of December 22 to 29 in 1955, and he didn't take over that station until February of 1956.

Q. Now, there is testimony from a Mr. Seidenglanz, a (6178) salesman for the Sidles Company on Page 1196, in which he claims that he had some difficulty about antifreeze with Mr. Stanley Coback and that has a relation to the Texas Company having an employee down there.

Now, how much of the Texas Company's PT antifreeze did Mr. Coback buy during the time that he was in this station as a dealer, do you know? A. Yes, he bought two cases. He was there slightly over a year, he was there part of two winters, and he bought two cases of our antifreeze.

Q. How much is two cases? A. Very little. It will take care of six customers. Less than six customers.

Q. It will take care of less than six customers? A. Right.

Q. And how much gasoline did he sell in the eleven months of 1956? A. During the year of 1956 he was there eleven months and he sold 54,000 gallons. In other words, he averaged about 5,000 gallons a month.

Q. I haven't gone into your job again very much, Mr. Underhill, because you gave sort of a full dissertation on it when you were here before, but let me just ask you

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specifically, your job has to do with merchandising by Texas dealers, doesn't it? (6179) A. Total merchandising and specifically TBA of all types.

Q. In that connection when you see dealers do you go into the question of balanced selling? A. Oh, yes.

Q. As against what do you balance the TBA sales? A. Against the gasoline.

Q. To what extent are you actually acquainted with the sales of TBA in terms of gallons of gasoline? A. Oh, I think I could answer most questions on the subject.

Mr. Dias: There might be a difference of opinion.

By Mr. Lorensen:

Q. Do you know the relation between TBA sales and gasoline gallonage for the average station, not taking the extremes that Mr. Dias keeps asking about? A. Yes.

Q. What is that relationship?

Mr. Dias: I object, your Honor. I don't think this witness has been qualified yet.

Hearing Examiner Kolb: Oh, I will overrule the objection.

A. Well, the average would be \$60 to \$65 per thousand total TBA.

By Mr. Lorensen:

Q. That is up in your particular district? A. In our area.

(6180) As a matter of fact, that is the average, those are factual figures.

Q. What is the relationship between antifreeze and gallonage? A. Well, antifreeze would be based on the number of customers. Our division is a cold climate one in the winter, people have to protect their cars anywhere

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from 25 below zero to 55 below zero in the different parts of our area, and this Omaha area it would range probably 20 to 30 below, the protection they would have to give their cars, which would mean two to two and a half gallons of permanent type antifreeze per customer. So in regard to your question this fellow has a 5,000 a month station, that would represent approximately one hundred customers. It would be expected that he would buy 200 to 250 gallons of antifreeze per year but to give the situation the benefit of the doubt, cut it straight in half and certainly he should buy at least 120, 130 gallons of antifreeze per year.

Q. How many gallons of antifreeze in the two cases of PT. which Mr. Coback bought from the Texas Company?

A. Twelve gallons.

Q. A total of twelve gallons? A. Twelve gallons.

Q. And do you have the figures of Mr. Coback's total Firestone or Goodrich TBA purchases during that year he was (6181) in the station? A. Yes, he bought Firestone, no Goodrich, he bought \$314 worth, total.

Q. Total. All TBA? A. That is correct.

Q. All Firestone or Goodrich? A. All Firestone, yes.

Q. Just for the matter of arithmetic, what does that come to? A. \$5.81. As a matter of fact, his total purchases of TBA from all sources was \$2,084.

Q. You found that out in connection with this investigation you made for the government to get the figures of purchases? A. That is correct.

Q. Now, how about Mr. Wilmer Cressman, are you acquainted with him? A. Yes, I know Mr. Cressman.

Q. Was he a dealer in your division? A. Yes, he was a dealer out of Omaha in the Bellevue area.

Q. Now, there is some testimony by Mr. Taylor, Branch Manager of the Storz Supply Company who testified at Page 1413 that he tried to sell Mr. Cressman some TBA and Cressman is supposed to have told him that he had a

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contract with Frost and was to buy everything there he could.

Now, Frost has been identified, I think, as a Firestone (6182) dealer? A. Goodrich.

Q. Goodrich dealer? A. Yes.

Q. Now, did you tell Mr. Cressman anything like that on the occasions when you saw him? A. Certainly not, I told him just the opposite.

Q. Did he ever tell you that the local people had told him he had to buy everything from Frost? A. He told me that I didn't need to tell him this story, that he had just heard it from our local people.

Q. And Mr. Scoville of the Sidles Company testified at Page 1359 that this same gentleman, Mr. Cressman handled Kendall oil and that he kept it in Texaco boxes. Did you notice anything about this fellow Cressman's display of oil by the way? A. Yes, I did. I don't know about where he might have stored his oil, but I do know that he had a nice display on a rack out in front of his station that is very vivid in my memory because on that rack was some Royal Tryton oil which is almost unheard of in my present area. It is a union oil product from the west coast, you don't see much of it. So being familiar with it from my work out on the west coast naturally that was drawn to my attention. It caused me to look at it and I also remember that he had Kendall (6183) oil on this rack and I believe he had a third competitive oil, I believe it was Mobil.

Q. Now, are you acquainted with a Mr. Beavers, D. F. Beavers? A. Yes.

Q. How long was he a Texaco dealer? A. Three months.

Q. That is all? A. Yes. At the end of three months he walked out of the station. At that point he owed us \$2,800. I remember that well.

D. B. Underhill, for Respondents—Cross

Cross-examination by Mr. Dias:

Q. Mr. Underhill, in connection with that last dealer you mentioned, Mr. Beaver, did you say that he left owing Texaco \$2,800? A. That is right.

Q. And he had been with them three months? A. Three months.

Q. How did he run up a bill like that for three months? (6184) A. That was an initial loan to help him start into business.

Q. Of how much, \$2,800? A. No, I think it was closer to \$4,000. I can't quote the exact amount.

Q. Was that a new station that he took on? A. It was a relatively new station and I believe he was the initial dealer but I am not sure of that either.

Q. Were you there when he moved in? A. No, I was not.

Q. Do you recall his principal line of TBA? A. Yes, his principal line was Firestone. I believe that he gave me the figure of something like \$1,400 worth of other merchandise he had bought elsewhere.

* * *

(6185) Q. Do you recall which dealers you called on? A. No, I wouldn't.

Q. For example, Victor Wager, how often had you called on (6186) him prior to October of 1956? A. Oh, I would guess two or three times. In the year.

Q. That is a guess. Can you recall a visit prior to October of 1956 on Mr. Wager? A. No specific calls. I can recall one call I would believe it to be during 1956 and at that time we were talking about selling truck tires and it was his contention that his buying price was not such that he was able to tap the truck tire market but we were able to work out a deal with the B. F. Goodrich Com-

D. B. Underhill, for Respondents—Cross

pany through their supplier Frost, whereby he could handle the bigger truck tires.

Q. And can you place the time of that call? A. No, as I say I think it to be sometime during 1956. It could just as easily have been 1955.

Q. You mentioned that he averages \$1,200 a year from Sidles, \$300 from Anderson and \$1,200 from others? A. Those were his figures, he gave them to me.

Q. Do you recall the products involved in those figures? A. Well, I recall that there were Delco batteries and Gates belts and Gates hoses, and AC spark plugs, and some DuPont chemicals that he purchased from Sidles. There were other items, I don't recall the others.

Q. You wouldn't recall that there were some items commonly referred to as hard parts or repair items such as ignition parts, mufflers, brakes? (6187) A. Yes, I excluded those items in the figures.

Q. In other words, those figures that you gave us related only to the commonly known TBA products, is that correct? A. That is correct.

Q. Did you give us the figures of his purchases from—who did he buy from Goodrich or Firestone or both? A. He bought from Goodrich.

Q. Did you give us his Goodrich figures? A. In 1955 as I recall they were roughly \$4,000, in 1956 as I recall they were between \$4,700 and \$4,800.

Q. Now, I don't believe you specified the year that this \$1,200 was spent at Sidles, \$300 at Anderson and the other. A. He gave me that as an average of yearly purchase from those other firms.

Q. For what years? A. The past two years.

Q. 1955 and 1956? A. 1955 and 1956.

Q. Which of these dealer conferences did you attend in Omaha? A. I personally didn't attend any of them in Omaha.

W. B. West, for Respondents—Direct

Q. Returning to Mr. Beaver, is that a common practice to loan dealers money that are going into business? A. It is done—

Mr. Royall: Would you say that again?

(6188) Mr. Dias: I wondered if that was a common practice in the Texas Company to loan dealers money to go into the dealer business, gas station business.

A. It has been done a number of times.

(6189) W. B. WEST was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Larenzen:

Q. Will you give your name to the reporter and state where you live, Mr. West? A. My name is W. B. West; I live at 3239 Lexington Road, Montgomery, Alabama.

Q. Are you connected with the Texas Company? A. Yes, sir; I am.

Q. What is your position? A. I am District Sales Representative, headquarters in Montgomery, covering central Alabama.

Q. Geographically, about what does that take in? A. Well, roughly 120 miles in depth and the breadth of the State, I would say 200 by 120 miles.

Q. How long have you had this particular position? A. This particular position since July 1, 1957.

Q. What was your position before that time? A. I was Zone Manager before that time in Montgomery, Alabama, covering south southern Alabama.

W. B. West, for Respondents—Direct

There was considerable overlap, I still have a portion of the territory in my present area. I still have a portion (6190) of the same assignment.

Q. How long have you been connected with the Texas Company? A. Since April 24, 1919.

Q. Have you been continuously in the sales end of the business since that time? A. I have been in the sales department, I wasn't in the sales end of the business until about 1929.

Q. But since that time you have been continuously in the sales end of the business? A. Yes, sir.

Q. Did you receive copies of Respondent's Exhibits 30, 31, and 32?

(Showing documents to the witness.)

A. Yes, sir; I did.

Q. You are acquainted with these exhibits and have you had an opportunity to look at them? A. Yes, sir; I have looked at them since I have been here and I am thoroughly acquainted with them.

Q. Since the date of these exhibits—let me show you one more and ask you, although this is a Dallas exhibit, whether you received a similar copy in your division; this is Exhibit 26-D and -D.

(Showing document to the witness.)

A. Yes, sir; I have received that, I have a copy of that.

(6191) Q. Since the date of these exhibits have you followed the policy of the Texas Company as set out in these exhibits? A. Yes, sir; I have.

Q. During all these years you have been in the sales department of the Texas Company, has—I will withdraw that question.

Since the date of these exhibits have you ever been with an employee of the Texas Company calling on dealers

W. B. West, for Respondents—Direct

and found that employee to talk to those dealers in a way that was contrary to the policy of the Texas Company as set out on these exhibits which I have shown to you? A. No, sir; I have not.

Q. Has any dealer complained to you that anyone in the Texas Company has told him that he had to buy his TBA from Firestone or Goodrich and couldn't buy it from any place he wanted to? A. Absolutely not.

Q. Now, during the time when you were zone manager in Montgomery, did you know of a dealer by the name of Wayne Hickman? A. Yes, sir; we had a dealer in Enterprise, Alabama, by the name of Wayne Hickman.

Q. Do you know about the time when he was in that station at Enterprise, Alabama? A. Yes, sir; he went in the station on February 1, 1956, (6192) and left the station on December 1, 1956.

Q. Now, there is some testimony in this case by Mr. Claude Chambers who said he was a former manager of the Cooper Tire and Rubber Company at Atlanta, and his testimony is at pages 2042 to 2044, and he testified that about a month or so before Mr. Hickman left this station; that is, in October of 1956, he called on Hickman and signed him up for approximately \$2800 worth of Cooper tires and tubes, and he testified that Mr. Hickman left the station and the new owner took over, and when the new owner took over he didn't take over this supply of tires.

Now, do you know anything about this Cooper tire purchase made by Mr. Hickman? A. Yes, sir; I do.

Q. Did you ever tell Mr. Hickman that he couldn't buy Cooper tires if he wanted to? A. No, sir.

Q. Did Mr. Hickman ever complain to you that anybody else had told him he couldn't buy Cooper tires if he wanted to? A. No, sir; as a matter of fact, I was the only employee that had any contact with Mr. Hickman.

W. B. West, for Respondents—Direct

Q. Oh, you had one of those situations where there was no salesman operating under you in this particular territory? A. In that particular territory; no, sir.

Q. So, you were the only employee of the Texas Company (6193) who was in touch with Mr. Hickman? A. That is correct.

Q. And you didn't tell him that he had to get rid of these Cooper tires and not handle them? A. Absolutely not.

Q. Now, tell me how you came to know about this purchase which Mr. Hickman had made? A. On one of my routine visits to Enterprise I naturally went by his station and usually he didn't stock any tires at all, but I saw this mass display of Cooper tires; they were all over the place, I guess there was 150 tires.

Q. Was the station big enough to hold them? A. No, sir; the station was just a small two-bay station and, I would say, 25 tires would be a big stock for him.

Q. What did he do with the other 125? A. They were in the lube bay, the wash bay, the sales room, anywhere he could store them and try to lock them up at night.

Q. And did you talk to him about this odd situation? A. No, sir; at that time I did not talk to him about it. I am not sure that it was on that trip that he told me he was getting out of the station, but it was about that time. That was the first time I talked to him about the tires.

Q. Well, now, at about the time that you saw all these tires, was Mr. Hickman having a little financial trouble (6194) paying for his gasoline? A. Yes, sir; that is one thing that made me wonder about the tires because he had already given our consignee a check for approximately \$1500 that had bounced due to insufficient funds. The consignee finally paid off the check and collected from Hickman after Hickman sold his station out.

W. B. West, for Respondents—Direct

Q. And about how much was he letting himself in for in this order of tires, \$2800, like Mr. Chambers testified?

A. I beg your pardon. I didn't get your question.

Q. Was the amount that he was going to have to pay for these tires around \$2800? A. Yes, sir.

Q. Had he paid for those tires at the time when you went to his station and saw them all over the place? A. No, sir.

Q. Did he have them on consignment? A. As I understand it from Mr. Hickman, Cooper sold him the tires with the understanding that no payment would be due for a period of 90 days.

Q. How many of those tires had he sold at the time you saw them there? A. That I do not know; not many, possibly two or three.

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(6195) Q. Now, you said at one of these visits he told you he had found someone to buy the station; is that correct? A. Yes, sir.

Q. Tell us what happened at that time? A. Well, he told me that he had found a dealer to buy the station, he was in financial straits, but that this new dealer was not in position financially to stock that large an inventory of tires.

Q. Hickman told you this? A. Hickman told me that; yes, sir.

Q. Let me ask you, before that did you tell Mr. Hickman he ought to get out of the station or find himself a buyer? A. No, sir; as a matter of fact I was very happy with Mr. Hickman because he was doing a good gallonage, above my estimates for the station, and that gallonage was what I was looking for and he was getting the gallonage and I was very happy.

W. B. West, for Respondents—Direct

The first intimation really that I had of any change being made in the station came from Hickman himself.

Q. And he told you he had found a buyer? A. That is correct.

(6196) Q. And who was that? A. Mr. Harvey Rimmer.

Q. Did you meet Mr. Rimmer at some time? A. Yes, sir; I met Mr. Rimmer with Mr. Hickman, went over the entire deal; I helped them to take inventory at the station.

Q. You helped Hickman and Rimmer take inventory? A. To arrive at a figure for Mr. Rimmer to pay for the merchandise that Mr. Hickman had; yes, sir.

Q. That is when this change-over is made the new dealer buys the inventory which the old, outgoing dealer has on the shelves? A. That is correct; yes, sir.

Q. Is that what happened in this case? A. That is correct.

Q. And you helped them make a list of that merchandise? A. That is correct.

Q. Now, was that merchandise Firestone and Goodrich merchandise with the exception of these Cooper tires? A. No, sir; there was no Firestone or Goodrich merchandise at all. He had Delco batteries, Champion batteries, Wicks oil filters, Gates fan belts and radiator hose, AC and Champion spark plugs, and a variety of other TBA which was none of the Goodrich or Firestone.

Q. Did Mr. Rimmer take over all of that merchandise with (6197) the exception of this large order of tires? A. He did, all except the Cooper tires.

Q. And you helped him take inventory, so you knew he was doing that, did you? A. That is correct.

Q. Did you tell him he couldn't take it over because it wasn't Firestone or Goodrich? A. No, sir. We discussed that in detail before they actually concluded their deal, and

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Rimmer told me that he would prefer not to take the tires; in the first place he wasn't financially able to handle that many tires; and in the second place, there is an Army Post near by with a lot of movement back and forth of personnel, and that he would prefer to handle a tire with national distribution or a little better known in that area possibly than a Cooper tire. And that he had already contacted the local Firestone distributor who had agreed to let him have tires on a consignment basis. That is, he would not have to pay for the tire until he sold it.

Now, this Firestone distributor was located in Enterprise about two blocks from him, and I believe the Cooper tires came from Atlanta which is roughly 250 miles away.

Q. So Mr. Hickman told you, first, that Mr. Rimmer wouldn't take over his deal with the Cooper Tire Company, is that correct? (6198) A. That is correct.

Q. And then Mr. Rimmer confirmed that to you when you talked to him? A. That is correct.

Q. And the fact is that Mr. Rimmer didn't take over that deal? A. That is correct.

Q. But he did buy all of the other merchandise from Mr. Hickman? A. Yes, sir.

Q. And all of that was not Firestone and not Goodrich? A. That is correct.

Q. Now, do you know whether thereafter Mr. Rimmer continued to buy TBA other than Firestone and Goodrich?

A. Yes, sir; he continued to buy, he did buy some Firestone merchandise, but continued to buy accessories and batteries from other suppliers.

Q. Do you know, have you got the figures there from the form of his total Firestone purchases? A. Yes, sir; in 1957, that is the only year I have the figures for, I believe, he purchased tires in the amount of \$561, and accessories in the amount of \$19 for a total of \$580.

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Q. And he bought no batteries at all from the Firestone? A. No batteries from Firestone and no TBA whatever from (6199) Goodrich.

Q. And his total Firestone or Goodrich TBA was \$580, is that correct? A. That is correct.

Q. And do you have his gasoline gallonage for that year there? A. Yes, sir; Mr. Rimmer's gasoline gallonage for 1957 was 136,605 gallons.

Q. And what, just to save us the arithmetic, do you have that divided by the TBA purchases so that you have the— A. Yes, sir; I do. That gives him \$4.25 per thousand gallons.

Q. Total of Firestone or Goodrich TBA? A. That is correct.

Q. What did Mr. Rimmer do with this merchandise that he bought from Mr. Hickman? Did he hide it or did he keep it on display? A. No, sir; it was all displayed.

Q. That includes, you said, Champion batteries— A. Delco batteries, Wicks filters, Gates fan belts, radiator hose, AC and Champion spark plugs. And various other items.

Q. And as far as you know, did he continue that type of a display until you lost contact with him? A. That is correct; yes, sir.

(6200) Q. That is, you moved to another—that territory did not stay in your new territory; is that correct? A. That is correct; that is not my territory at this time.

Q. So, when you changed jobs he was under somebody else? A. That is correct.

(6201) Q. Now, while you were zone manager down there, can you tell me about how many dealers were within your zone? A. Total resale outlets?

Q. Well, pump, the type outlets that had pumps and sold to motorists. A. Well, it was a large area, much

W. B. West, for Respondents—Direct

larger than the one I have now and this is an estimate, but it couldn't be too far wrong, I would say around 300 to 325 total resale outlets.

Q. And out of that total, how many were dealers that had leases from the Texas Company? A. About thirty.

Q. So then, that makes a balance of somewhere between 270 and 320 of non-lessee type of dealers? A. That is right. Either contract or no contract at all.

Q. And did these thirty lessee type dealers have facilities for handling TBA? A. Yes, sir, they had facilities for handling TBA.

Q. They had display facilities and storage facilities? A. Yes, sir.

Q. Now, of the balance of the dealers that were not lessee dealers, how many had the same type of facilities for handling TBA? A. Approximately eight.

Q. Will you tell me about how many of your thirty lessee dealers handled Firestone or Goodrich TBA? (6202) A. There were nine or ten of the thirty that handled Firestone or Goodrich.

Q. And of your eight stations that had the same type of facilities for handling TBA, about how many of those handled Firestone or Goodrich? A. Six of those handled Firestone or Goodrich.

Q. Now, in your present territory where you are now, about how many dealers do you have? A. A total of around two, that is lessee dealers and total dealers, it would be around 230 to 240.

Q. And of those, about how many are the leased type station, where the dealer has the lease from the Texas Company? A. I have 25 leased stations.

Q. Are the balance of stations which are either under contract or no-contract basis? A. Will you ask that again, please?

W. B. West, for Respondents—Direct

Q. The balance of your stations are the type that you have called in the other territory as ones that either had a contract or no contract? A. That is right, either contract or no contract for the remainder.

Q. They handle the Texaco gasoline? A. That is correct.

Q. But had no lease connection with the Texas Company? (6203) A. That is correct.

Q. Now, of your 25 leased stations, about how many had facilities for handling TBA? A. Of the 25 leased stations, all of them had facilities for handling TBA, but two of them could possibly be eliminated as not having equal facilities to the others. I would say 23 had complete facilities.

Q. Of those, how many handled Firestone or Goodrich TBA? A. Of those, about nine or ten of those handled Firestone or Goodrich.

Q. When you said they handled Firestone or Goodrich, that doesn't mean they didn't handle anything else, does it? A. No, sir, it does not.

Q. And the same is true with your answer in your old territory? A. That is correct.

Q. And of the remaining stations, about how many had the same kind of TBA facilities as these 23 leased stations which you said had adequate TBA facilities? A. Twelve of the remainder have equal facilities.

Q. And of those, how many handled Firestone TBA? A. Nine of that twelve handled either Firestone—eight of that twelve handled either Firestone or Goodrich.

Q. Again, that doesn't mean exclusively, it means to some extent? (6204) A. That is correct.

Q. Now, what sort of tires do the dealers who handle TBA in your territory handle?

W. B. West, for Respondents—Cross

(6205) Mr. Lorenzen: Not handled, but other types he has seen there.

The Witness: U. S., Goodyear, Hood, Cooper, Kelly Springfield, and various tires, various other tires, recaps of all kinds.

By Mr. Lorenzen:

Q. That is in stations handling the Texaco gasoline?

A. That is correct, yes, sir.

Q. And how about batteries? Do you see batteries of various makes in those stations? A. Yes, sir, they have a variety of batteries in the area. The leased and the non-leased stations have a variety of batteries.

Q. Do you recall any names of any specific batteries that you have seen on display at such stations? A. Yes, sir. The Southern battery, the Champion battery, (6206) the Exide, the Delco, those are the ones I remember best.

Mr. Lorenzen: That is all.

Hearing Examiner Kolb: Cross-examine.

Cross examination by Mr. Dias:

Q. Mr. West, I get the impression that with the small number of lessee stations and the large number of contract stations that your area must be in a rural area; is that correct? A. That is correct, yes, sir.

Q. What are some of the larger cities that are in your area? A. Montgomery, a portion of that is in my area; Selma; Troy; Talladega; Alexander City; Clanton.

W. B. West, for Respondents—Cross

(6207) Q. The 23 lessees that had TBA facilities, am I in the (6208) right area now, is this the area? A. Yes, sir. You are in the right area.

Q. Of these 23 lessees that had TBA facilities, where are they located? A. They are located all over, sir.

Q. Throughout your entire territory, is that correct? A. Yes, sir.

Q. And the nine or ten that handle Firestone or Goodrich, where are they located? A. They are located all over, too. They are scattered out in the entire area.

Q. Well, do I understand, then, that in all these cities that you have mentioned, most of them are so-called contract dealers, that is they own their own property or at least Texaco doesn't own it? A. Yes, sir, that is correct. Most of them are contract or no contract dealers.

Q. At any rate, Texaco does not own the property? A. That is correct.

Q. And in that first area that you mentioned, I think you said about thirty lessees had facilities for handling TBA? A. About thirty. I wouldn't be exact on that. About thirty leased stations in the whole area.

Q. In the whole area of your first area? A. That is right.

(6209) Q. Can you give us—as you did here—what are some of the metropolitan areas in your first area? A. Dothan, Ozark, Andalusia, Florala, Brewton, Evergreen, Enterprise.

Q. You have given me the larger ones now, haven't you? A. That is right.

Q. Can you give us some idea of the population of each of those? A. Dothan is around, roughly, 30,000.

Q. 30,000? A. Yes, sir.

Q. And Ozark? A. Ozark, 6,000.

Q. And Andalusia? A. Andalusia, 8,000.

Q. Florala? A. About 3,500.

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Q. Brewton? A. Brewton, about 4,000.

Q. Evergreen? A. Oh, 3,000.

Q. Enterprise? A. Enterprise, about 5,000.

Q. How close is your area to Atlanta? Are you in the Atlanta division? (6210) A. Correct, sir.

Q. How close are you to Atlanta? A. 175 miles.

Q. The nearest town in your area is 175 miles to Atlanta; is that correct? A. No, sir. My headquarters are 175 miles.

Q. Oh, your headquarters. A. Montgomery, now, the nearest town would be about 100 miles from Atlanta.

Q. I see. That is, the nearest town in your area would be about 100 miles from Atlanta? A. That is correct.

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(6215) REAGAN FERGUSON, Jr., was called as a witness on behalf of the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you give your name to the reporter and tell where you live. A. Reagan Ferguson, Jr.; I live at Atlanta, Georgia, 436 Valley Brook Drive, Northeast.

Q. You testified before down in Atlanta, didn't you? A. That is right.

Q. When you were a Government witness? A. That is right.

Q. And do you still have a position with the Texas Company which deals with TBA in the Atlanta Division? A. That is right.

Q. Is that section of Alabama of which Mr. West is manager in your division? A. Yes, it is.

Q. He testified yesterday that he had some 200 non-lessee type stations in that division and that of those, I

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believe, it was only about a dozen had facilities for merchandising TBA.

(6216) Now, is that typical also of the non-lessee type stations in your division located in the metropolitan area such as Atlanta? A. I think in a metropolitan area such as Atlanta you would find that the non-lessee type stations had better facilities than the type of stations in Mr. West's area, that more of them have facilities for handling TBA.

Q. And that is more percentagewise have them? A. That is right.

Q. But do they all have facilities for handling TBA? A. Oh, no.

Q. A good many still do not? A. That is right. A good percentage.

Q. Are there quite a few of these non-lessee type dealers in the area which has been defined as metropolitan Atlanta? A. Yes, there are; quite a few.

Q. And did you at our request within the last couple of months visit each one of these "D" stations; that is, what we have been calling them in this case, the non-lessee stations? A. That is right, I did, since November 1.

Q. How many were there, to begin with? A. There were 59 in the Atlanta metropolitan area described in this case.

Q. There has been testimony heretofore that these "D" stations differed from the lessee stations in that many of them (6217) only had gasoline pumps which were attached to some other type of business such as restaurants or grocery stores. Did you find that type of station among these 59 stations? A. Yes, I did, in a large number of them.

Q. In how many situations did you find that the "D" station was attached to some other type of business and had no TBA facilities? A. There were 29 of those.

Q. Do you have with you pictures which you have taken of those 29 stations? A. Yes, I do.

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Q. And did you take them yourself? A. Yes, I took all of them personally.

Q. And are those accurate representation of the pumps and business to which they were attached in those 29 instances? A. I took them just as I found them at the station, if that is what you mean. I took the pictures just as I found them.

Q. You drove up outside the station and snapped the picture? A. That is right.

Q. And there it is? A. That is right.

Q. And you say you have 29 of them? A. That is right.

(Documents were handed to counsel.)

(6218) Mr. Lorenzen: Perhaps we could have the envelope marked as one exhibit with 29 pictures and then perhaps later we could have the reporter stamp each one.

Hearing Examiner Kolb: The reporter will have to stamp them "A", "B", "C", "D", and so forth.

Are these stations who do not handle TBA?

Mr. Lorenzen: Who do not handle and don't have the facilities to handle.

Hearing Examiner Kolb: Why bother with the pictures?

Mr. Lorenzen: Because we think it is very important to let your Honor see why the different figures that the Government has put in between "C" and "D" stations.

The Government's contention is that these stations have a much lower purchase of Firestone and Goodrich TBA because they don't have any leased connection with the Texas Company.

Our contention, on the other hand, is it is that way because they can't handle any TBA and we are not bothering with him, we are just taking one district simply as illustrative.

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Your Honor might be interested in seeing the type of stations which count statistically but which obviously shouldn't be included in any over-all view of the situation.

Hearing Examiner Kolb: All right.

(6219) Mr. Dias: I would like to see the pictures first.

In the first place, it seems to me that more persuasive would be figures, in the record telling us exactly how many of this type stations we have. Now, we know now that there are 29 such stations in the Atlanta area, why can't we get the same type figure for each of the areas in which we have been? In other words, how many stations in each of the areas in which we have been are not fit to handle TBA.

Mr. Lorenzen: Perhaps if the Commission wants to give us somebody to make a nose-count of thousands of stations throughout the country we would be most happy to have it in here, but we thought we would have to do it on an illustrative basis because it is a pretty big physical job.

Hearing Examiner Kolb: These are typical of the "D" stations?

Mr. Lorenzen: In metropolitan areas which are obviously better because we have statistics of what the situation is in country areas yesterday through Mr. West's testimony.

Mr. Dias: I am still not clear on what this is supposed to show. Is it supposed to show what a "D" station that is not fit to handle TBA looks like; is that what these are?

(6220) Mr. Lorenzen: Yes, that is what it is for. I mean, I think one picture is worth a lot more than a lot of testimony that these stations are tied

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up with grocery stores and beer parlors and restaurants and nut factories in this case.

Mr. Dias: I can visualize that very clearly but what I would like to know are how many such things are there, I think that would be more important; that would be more persuasive, in my opinion.

Mr. Lorenzen: We have given that to you in one particular area in which the Commission chose to have its testimony. It happens to be one in which there is a number of these stations.

Generally in metropolitan areas you don't get as many of this type station as you do in Atlanta, so, it seems to me, it is best to select that as typical.

Mr. Dias: My objection is that they are irrelevant. I think the testimony is clear enough that the reason these stations can't handle the TBA, they don't have enough room, that they are primarily designed to sell food, you name it, any other product, they happen to have a gas pump in front. That is the objection I have to it.

Hearing Examiner Kolb: The objection will be overruled, and the documents will be received in evidence as Respondent's Exhibits 77-A through -Z-4.

(6221) (The document referred to was marked Respondent's Exhibit 77-A through -Z-4, inclusive, for identification, and received in evidence.)

Mr. Dias: Before you go on, I just wanted to state for the record that in his argument for the admission of these documents 77-A through -Z-4, there was some sweeping statement made and they have been admitted over my objection, but I don't think these pictures that were made in one metropolitan area as being typical of all this type station throughout the country.

Reagan Ferguson, Jr., for Respondents—Direct

(6222) *By Mr. Lorenzen:*

Q. Let me ask you, Mr. Ferguson, some of these represent stations showing some fairly imposing buildings. If you will look at 77-A, for example, what is that Lloyd's, which is a pretty big building with two pumps in front of it? A. Well, this is one of a chain of B. Lloyd's Pecan Stations, as they actually call them. They specialize in selling pecans and pecan candies and actually there are two of this type station in the group, both of them B. Lloyd stations.

Q. Z-4 is another one, is that right? A. That is right. And they actually do, as a matter of fact, a very small volume of gasoline.

Q. There is a Texaco sign and a couple of pumps right in front of that candy store. A. That is right.

Q. Now, how about 77-B? What is the situation in that one? A. That is operated by Lymburner's Nursery, a large nursery in that area, and they are in the business of selling plants, shrubbery and flowers, and they have a couple of pumps out in front of their place.

Q. We have a couple of downtown ones here, 77-E and F; what is the situation in those cases? A. That is the Fox Theater parking lot and the Aagsley parking lot. They have a couple of pumps out there with (6223) absolutely no facilities for handling TBA. They are strictly in the parking business.

Q. And this 77-G seems to portray something that looks like a service station in the city. A. This station is known as Crook's Corner, and it is primarily a beer place, a couple of pumps in front.

Q. Is his beer gallonage higher than his gasoline? A. I expect it would compare pretty favorably.

Q. How about 77-J; that is a brick building apparently in the city. What do they do there? A. That is the South

Reagan Ferguson, Jr., for Respondents—Direct

Bend Grocery there. They handle strictly groceries and meats there and they are strictly a grocery store with just a couple of pumps set in front. There are a number of the grocery store type accounts in that group.

Q. I believe there are some fisheries pictured in here.

A. There is one known as Mickey's Bait and Tackle Shop. It is located on a road leading into an area where there is good fishing there. They deal principally in fishing tackle and fish baits and that sort of thing.

Another called A. J. White's, I believe, handles fishing supplies and fishing bait, principally.

Q. Is there one that has a sign on it, Kennesaw Fisheries? A. Yes, there is one called Kennesaw Fisheries.

Q. What is that about? (6224) A. They handle fish. They actually sell fish.

Q. And the other pictures in here are all of that category, unless we had one slipped in here by mistake which we will take out, which do not have TBA facilities and don't handle it? A. That is right. There are a few in there, two or three, who are not in any other type business but they are satisfied just to get a little income from the small volume of gasoline they sell. They don't sell anything else.

Q. They have no facilities to handle TBA? A. None whatsoever.

Q. And of the other stations now that you have left, which is thirty stations, what do you find with respect to their facilities? A. Well, there are four of those stations who have some facilities for handling TBA to a limited extent, but in actuality don't. There are 26 other stations who have some facilities and do handle some TBA.

Mr. Lorenzen: That is all.

Hearing Examiner Kolb: Cross-examine.

Reagan Ferguson, Jr., for Respondents—Cross

Cross examination by Mr. Dias:

Q. Is it your testimony then that the D type station is not a TBA factor in your area? A. Actually we have some very good TBA accounts that are (6225) D type stations, some D accounts who do a good volume of TBA business.

Q. Can you tell us how many there are of those? A. In my division?

Q. Whatever area you are in charge of, yes. A. No, sir, I couldn't.

Q. I think you mentioned that there are some lessees in your area that are not fit to carry TBA. Can you tell us how many there would be in that category?

Mr. Lorenzen: There wasn't any testimony like that.

By Mr. Dias:

Q. Didn't you tell us there were some lessees that were not fitted to carry TBA? A. I don't recall that testimony.

Q. All the lessees in your area, then, are fitted to carry TBA, is that correct? A. There would, I think, be some who would not.

Q. All right, then, how many would not? Do you have any idea? A. No, sir, I couldn't say.

Q. Incidentally, I think I understand why a D station can not handle TBA; what would make it undesirable or impossible for a lessee to handle TBA? I mean what is there about the station that would make it impossible? (6226) A. Well, the majority of the stations operated by lessee dealers are constructed to provide facilities for storing and displaying TBA and rendering TBA service. And the larger portion of the D type stations just don't have those facilities because they are constructed for other purposes.

Mr. Dias: I have nothing further.

Reagan Ferguson, Jr., for Respondents—Redirect

George H. Glenn, for Respondents—Direct

Redirect examination by Mr. Lorenzen:

Q. Those lessee stations which can't handle it are a few of the old ones left in your division that have not been rehabilitated; is that right? A. That is right. They are all quite old stations.

Q. When you say there are a few of them, you are talking now division-wise? A. That is right.

Q. Which covers a lot of territory? A. Yes, sir.

Q. Percentage-wise, those are a very few, are they? A. There is a very small percentage of the lessee type stations.

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(6228) GEORGE H. GLENN was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. You better give your name and address to the reporter anyway. A. George H. Glenn, 28 West Devonia Avenue, Mount Vernon, New York.

Q. You have testified before here in Washington when the Commission called you, have you not? A. I did, sir.

Q. Is your position still about the same as it was when you testified before? A. It is.

Q. I think the last time you were on the stand they kind of cut you off before you had a chance to tell us what all of your experience has been in this oil industry, so would you tell us what kind of positions you have had with the Texas Company and just briefly what your duties have been in those positions? A. Yes.

As I recall in the previous testimony I described my work in the Texas Company by positions and by years in

George H. Glenn, for Respondents—Direct

date (6229) order from the then present time and going back. When I arrived at the year, I believe 1949, it apparently was felt that that was sufficient.

The record, however, beyond that is this: Between 1947 and 1949 I was Assistant Division Manager in the Boston Division, my title parenthetically had after it Sales Promotion. As assistant division manager in charge of sales promotion I handled all of the sales promotion activities of the division and including the administration and the direction of the TBA program.

° Prior to 1947 and for a period of six years back to May 1942, I served in the Boston division as a state manager in several different sections which embraced all of the six New England states, if not in total then at least in part. As a state manager my job was to be responsible for the company's complete marketing operation in the area that I was covering and that concerned the sale of all of its products and the direction and administration of all of its programs including the TBA program.

Prior to that I was a zone manager at several locations in New England between the years 1937 and 1941, and have briefly the duties of a zone manager are comparable to those that I just described for the state manager except covering a smaller territory and a little lower level of administration and authority.

(6230) Prior to that I go back for thirteen years, 1937 to 1924 and during that period of time I held various positions all of which were directly connected with sales work in the sales department in New England.

Q. Now, Mr. Glenn, how old is this marketing research division which you now head up? A. It was established March 15, 1955—I beg your pardon, May 15, 1955.

Q. So, when you testified—when did you testify, in 1956? A. It seems to me it was in 1956, yes, sir.

George H. Glenn, for Respondents—Direct

Q. About the Fall of 1956? A. Yes, sir.

Q. This was a new department? A. Yes, sir.

Q. And at that time did you have a backlog of TBA statistics available to you? A. No, as a matter of fact I don't know how familiar people are with establishing departments and especially a marketing research division, but generally the pretty well accepted record on getting established is that you take anywhere from three to seven years before you start getting your feet on the ground with a well-established department and during which time you are involved in establishing bench marks and criteria and patterns and so forth for the (6231) various work in which you eventually will be interested. It so happened that TBA as such and strictly from a marketing research viewpoint was not on the high priority list so far as marketing research was concerned up to that time and for that reason I had not done any marketing research work on TBA.

Q. And that was the basis for your testimony before?
A. That is right.

Q. That in this marketing research capacity your first contact with TBA was in preparing the exhibits— A. Came by way of this case.

Q. —which the Government had asked for and which the Government put in through you? A. That is correct.

Q. Now, since that time you have had quite a lot to do with TBA in connection with this case, if nothing else? A. Far more than the marketing research concept would ordinarily direct, but, nevertheless, it has helped to make me feel quite expert about the TBA business.

Q. Now, certain exhibits were put in evidence, I believe they were prepared through your department, Exhibits 114 and 115, do you recognize those by number? A. Yes, sir, I do.

George H. Glenn, for Respondents—Direct

Q. They are the annual record of TBA purchases of Goodrich and Firestone TBA by divisions? (6232) A. Yes, sir.

Q. Have you at our request translated the information on those exhibits, Commission's Exhibits 114 and 115, into a what do you call this, a graph, graphic form? A. That is a good name for it, yes, sir.

Q. Into a graph? A. Yes, sir.

Q. And does that graph accurately reflect and is it based entirely upon the information contained in Exhibits 114 and 115? A. Yes, sir.

Q. Tell us what this graph shows? A. Well, number one, the graph is taken from CX-114-A to D for Goodrich and CX-115-A to D covering Firestone. These two exhibits include material which was prepared in my office and made available to the Commission at their request and covers the total purchases of TBA materials separately for Firestone and Goodrich, separately for each of our divisions, and separately for the years 1952, 1953, 1954, 1955, and through June 30 of 1956.

. . .

(6233) (The document referred to was marked Respondent's Exhibit 78-A through -D, for identification.)

By Mr. Lorenzen:

Q. I think you were telling us what exhibit for identification 78-A through -D shows A. Yes, sir.

Q. With reference to the source material, Commission's Exhibits 114 and 115? A. Yes, sir. It shows the raw material from which this chart was drawn, the raw material being, as I described the total TBA purchases by Texaco accounts from the Firestone or the Goodrich Companies.

George H. Glenn, for Respondents—Direct

This chart was drawn to display for each of the divisions and separately for Firestone and Goodrich the increase or decrease in volume that is reflected for a series of three periods, 1953 against 1952; 1954 against 1953; and 1955 against 1954.

The bars are made to correlate with the percentage numbers that are shown as to either an increase or a decrease.

Q. Now, just to demonstrate this, let's look at the (6234) Boston division which happens to be the first one on 78-A. A. Yes, sir.

Q. That shows that there was a, what looks like a pretty good sized increase, 1953 over 1952, and 1954 over 1953? A. Yes, sir.

Q. In sales of Goodrich TBA in that division; is that correct? A. That is correct.

Q. Now, then, if you look at the Denver division, for example, on 78-B. A. Yes, sir.

Q. During the same time you find that there was a decrease? A. A decrease.

Q. In Goodrich sales? A. That is correct.

And so on through the review of all of the divisions and the review of increases and decreases for both Firestone and Goodrich. The chart indicates a complete lack of uniformity pattern or any suggestion of the results being directed by a program that would bring about similar results through each of the divisions.

Mr. Dias: Your Honor, I object to the last part of that. I think that is a fact or an inference to be drawn by yourself or the Commission. If I understand the witness's testimony, he is saying that there is no pattern (6235) that we can follow which may or may not be so; but if I understand his testimony also, I gather that the inference is that no pat-

George H. Glenn, for Respondents—Direct

tern that can be attributed to this method of selling TBA. I am not clear on his testimony and I think either it ought to be amplified or else stricken.

• • •

Q. Will you amplify that in line with Mr. Dias's suggestion? Do you remember it? A. Yes, sir.

Well, the reason for the differences among the divisions, as I have attempted to point out, in this previous statement are several. They are not necessarily directed to any one situation.

There are throughout this country various purchasing habits on the part of the public, various degrees of interest in salesmanship and merchandising on the part of dealers; there is a greater exposure from competition in some areas than there is in others, and to whatever degree we are (6236) involved in TBA we are confronted with these situations which results in a complete lack of uniform pattern of the results that are obtained through our divisions.

• • •

(6240) Q. Mr. Glenn, about these percentage increases and decreases that we have talked about; they are in terms of actual dollars? A. Yes, sir; as reflected on the report.

Q. There has been no effort made here to take into account inflation or anything of that kind? A. No, sir; they are the raw figures as reported on the report.

Q. And to the extent that later on an exhibit may be put in which takes such factors among others into account. Of course, to that extent this graph— A. A chart would need to be prepared for that purpose.

Q. Yes, but this is just the actual figures as they are in evidence? A. The dollars; yes, sir.

George H. Glenn, for Respondents—Direct

Q. Mr. Glenn, have you been requested to have prepared under your supervision certain maps of the cities of Dallas, Chicago, and Omaha? A. Yes, sir; I was requested to prepare such maps.

Q. Are these maps which I show you the ones which you had (6241) prepared under your supervision?

(Handing documents to the witness.)

A. Yes, sir; this is the map on Dallas.

Mr. Lorenzen: I ask to have the Dallas map identified by the witness, given the next exhibit number, which is 79.

(The document referred to was marked Respondent's Exhibit 79-A through -E, for identification.)

The Witness: And this is the map on Omaha that we prepared.

Mr. Lorenzen: I ask to have the Omaha map marked as Respondent's Exhibit 80.

(The document referred to was marked Respondent's Exhibit 80-A through -E, for identification.)

By Mr. Lorenzen:

Q. And I hand you another map and ask you if that is the last of these maps which was prepared under your supervision? A. That is the map of Chicago; yes, sir.

Mr. Lorenzen: I ask to have the Chicago map marked Respondent's Exhibit 81.

(The document referred to was marked Respondent's Exhibit 81-A through -G, for identification.)

George H. Glenn, for Respondents—Direct

By Mr. Lorensen:

Q. Mr. Glenn, the basic map itself was one which your department obtained from some company which puts out maps of (6242) cities? You didn't make this? A. The map itself; yes, sir.

Q. You did not make up the map? A. No, sir; we spotted the map.

Q. Now, what you did was place on the map certain numbered yellow and red dots? A. That is correct.

Q. Is that correct? A. Yes, sir.

Q. And those dots are tabbed or indexed to the additional sheets which are attached to these maps by scotch tape and which have been given letters, "B", "C", "D", and "E" in the case of this Dallas map which is Respondent's Exhibit 79; and similar letters in the other maps? A. Yes, sir.

Q. And those indices have the same numbers as the dots? A. That is correct.

Q. So that if you find dots number 1, you can then look for number 1 on the index and find a name? A. That is right.

Q. Now, these names were given to you, were they not, as names of dealers mentioned in this record by Government witnesses? A. Yes, sir.

Q. And as far as you are concerned all you did was take the (6243) names and address furnished you out of this record and make yellow dots for them? A. And spot them on the map; yes, sir.

Q. And those, to the best of your belief, accurately are spotted on the map? A. Yes, sir.

Q. So, taking Dallas again as an example, on 79-C, we find two, this is a man that was mentioned yesterday, as B. S. Colgin, 6634 Snider Plaza, Dallas, Texas; dot No. 2 on the map would be placed as nearly as possible over 6634 Snider Plaza? A. Right.

George H. Glenn, for Respondents—Direct

Q. And that is the way in which all of these dots were positioned on the map? A. That is correct.

Q. Now, the yellow dots, then, apply to the names and addresses of witnesses mentioned in the Government's case to the extent that those names and addresses were given to you? A. That is right.

Q. Now, these red dots which are identified similarly, are they not, to the yellow dots? A. They are spotted on the map in the same manner as the—the same procedure was used and they have numbers which are tied into the index that is attached on the individual (6244) sheets.

Q. All right.

Now, those red dot indexes, in addition to having the name of a dealer have his address? A. Yes, sir.

Q. And, now, they have two additional columns? A. Yes, sir. Well, that represents dealers concerning whom there is testimony in the case relative to their selling other than sponsored TBA products understanding the policy of the Texas Company and with reference to photographs either one or more photographs that may be in evidence concerning their individual locations and the display of TBA material.

Q. So, under this column in each of the legends headed "transcript", where there is a page number it means that page there is evidence relating to this particular dealer? A. That is correct.

Q. And then in the last column you have a letter, taking, for example, the letter "S", it shows that the testimony at the place cited is the testimony of a witness whom the Government put on the stand and he said that he sold TBA to the particular dealer; is that correct? A. Yes, sir.

Q. And the letter "D" means that at the place cited, there is testimony that the particular dealer displayed TBA other than (6245) Firestone or Goodrich? A. That is correct.

George H. Glenn, for Respondents—Direct

Q. And the letter "M" means there is testimony that that particular dealer attended one of these Texaco dealer meetings? A. Training-course meeting, however you want to name it.

Q. And the letter "F" means that there is testimony by the dealer that he understood the Texas Company's TBA policy? A. Letter "P" is that, sir?

Q. "P", is that it? A. Yes sir.

Q. It looks like an "F" here.

It should be "P".

Now, in addition to testimony references in some of these cases instead of a "TR" citation there is an "RX" citation, and that is with reference to an exhibit number is it? A. That is correct.

Q. A picture of this particular dealer's establishment? A. One or more pictures of the different establishments that are shown there.

Q. That is all that shows on this Exhibit 79-D and -E, but I believe in the Chicago exhibit, which your Honor has, there are two additional types of letters that are used. There is a "TR" reference as well as an exhibit reference (6246) and those transcript references are followed by the letters "I," in one case, and "A" in another case.

And what do those mean? A. "I" and "A".

I think I have that on the legend.

Q. Well, the legend means that the photograph was identified on one page and— A. Identified, yes, and admitted.

Q. And admitted in evidence on the other? A. Yes.

Q. So, this map, of course, was prepared before yesterday's testimony? A. Oh, yes; it was.

Q. So that insofar as these dealers have been discussed in the testimony yesterday there is no record reference to that on these maps? A. Not to my knowledge; no, sir.

George H. Glenn, for Respondents—Direct

Q. So, all that you did in your department was mechanically see that the names of the dealers who have been mentioned in the record, as indicated, were properly inserted— A. Spotted on the map and an index prepared to agree with the spotting on the map.

(6247) Mr. Lorenzen: I would now like to offer in evidence Exhibits 79, 80, and 81.

Mr. Dias: I would like to know what the purpose is.

Mr. Lorenzen: Well, the purpose of these maps seems to be pretty plain on the face. There is some hearsay testimony which was put into this record, sometimes double or triple hearsay, that some of these dealers are supposed to have said to somebody else that they didn't want to buy TBA from the witness because apparently they thought that they mustn't do it because either the Texas Company or somebody wouldn't like them to do it. It is very plain why in most cases.

We believe that this map which shows the surrounding dealers spotted all over the map indicates rather plainly either that the government witnesses' hearsay, if we had been able to cross-examine somebody about it, wouldn't have accorded with the facts because it just couldn't have. You can't have a station in these surroundings and have any opinion of that type.

Second, at most an excuse was given to a persistent salesman to brush him off without any evidence at all, in fact, that the policy of the Texas Company was not plainly understood in this particular neighborhood.

Mr. Dias: May I be heard?

George H. Glenn, for Respondents—Direct

(6248) Mr. Lorenzen: Your Honor will note that in most of these cases all of the cases of the pictures, of course, and in all of the cases where the legend "D" appears, the competing merchandise is actually displayed in these other Texas stations, so that it is not just a question of being informed of what the policy is through meetings and things of that kind, but anybody who wasn't blind could see openly displayed competing merchandise in any number of these stations.

As I said, the dealers either were in the neighborhood or else they couldn't conceivably get into town without going by a half dozen of these stations.

Mr. Dias: Would this Number 1 in the Omaha map be a good example of that?

Mr. Lorenzen: Omaha is the smallest city and naturally you have the smallest amount of dealers. Certainly it is a good example even in Omaha. How could Number 1 get into the center of Omaha without going by a half dozen stations?

Mr. Dias: Your Honor, I object to it on the grounds that it is unduly repetitious. The dealers have testified; they have given their names and addresses and places of business. We know what area they are in. I can't see any possible relevancy to the fact that there may be a dealer on Tenth Street, or take any street you want, and (6249) post other dealers around them. How does that prove whether or not X dealer feels that he has been oppressed?

That doesn't have anything to do with it, nor does it have anything to do with the fact that he may have told a salesman that he was told by a Texaco salesman that he couldn't handle anything but sponsored TBA. This doesn't prove a thing, and I think it is irrelevant and I think it should be rejected.

George H. Glenn, for Respondents—Direct

Mr. Lorenzen: May I say just one thing?

While it is perfectly true that the geographical locations are shown, the relationship between the geographical locations are not shown unless your Honor is going to take judicial notice of a few hundred locations and try to fit them into a map himself. That is, the basic purpose of this map is to translate the testimony into usable form, so it is not repetitious at all.

Hearing Examiner Kolb: All these dots indicate reference as they were stations which were referred to in some way in the record as appears on the explanatory sheets and the numbers?

Mr. Lorenzen: That is so.

Mr. Dias: I don't see how that is relevant, your Honor. How does that prove whether or not a dealer X told an independent supplier that he felt he couldn't buy? It just doesn't have any bearing on that at all.

(6250) Hearing Examiner Kolb: It is simply a matter of bringing this stuff together with reference to the record.

I think that might be helpful in considering this case, as a matter of fact, to get the information in a place where you can find it.

Mr. Dias: I don't think so. Seriously, it doesn't prove one iota or one part—

Hearing Examiner Kolb: It doesn't prove anything because it simply brings this information together in one document, as I understand it, which is scattered throughout the record.

Mr. Dias: Doesn't that more properly belong in the brief, rather than as more papers in the record?

George H. Glenn, for Respondents—Direct

Hearing Examiner Kolb: One way or the other, I don't think it makes a great deal of difference.

I will overrule the objection and admit the documents into evidence as Respondent's Exhibits 79-A through E, 80-A through E, and 81-A through G.

(Whereupon, the documents referred to, heretofore marked Respondent's Exhibits 79-A through E, 80-A through E, and 81-A through G for identification, were received in evidence.)

By Mr. Lorenzen:

Q. Mr. Glenn, when you testified before at Page 383 of this record, you testified that of the total commissions (6251) paid to the Texas Company under the sales commission contracts, 70 percent were direct expenses attributable in your accounting to these commissions and, therefore, earnings were only 30 percent. Do you recall that testimony? A. Yes, sir, I do.

Q. Now, let me ask you: Did you include as an expense factor the additional cost of building your stations in such a way that they could handle and merchandise TBA? A. No, sir. That is not one of the factors included because our system does not provide for segregating the various sections of a service station as between TBA and lubrication and gasoline and repair work and what have you. So that is not included.

Q. However, there is that additional expense, of course? A. Of course there is.

Q. That exists— A. The expense is there but it is not included in our calculation of expenses in connection with the TBA program.

George H. Glenn, for Respondents—Direct

(6252) Q. Did you include as an expense the cost incidental to the use of your credit cards for charging Firestone and Goodrich merchandise? (6253) A. No, sir, we did not, because again our system does not provide for segregating, as I believe I have previously stated, on our credit card sales the various types of merchandise that is sold. The credit card business is treated as money rather than items and brands of merchandise. So it is not possible to isolate it and charge it. But there is an expense, of course, in connection with the processing and handling of all the invoices to the extent that they do exist on TBA purchases.

Q. You carried that lack of breakdown over even to your deferred credit card sales? A. That is correct.

Q. And there you have a substantial number of millions of dollars invested in credit principally for TBA, do you not? A. That is right.

Q. You didn't charge the interest— A. That is not charged directly to the TBA program, no, sir.

Q. Either the expense or the interest on that money? A. Neither.

Q. But that is something you have to actually pay for? A. That is over and above the item of 70 percent that I have mentioned as the cost of the program and it is an expense that we assume and it is our money which is tied up. Capital is tied up on which we do not get a return.

(6265) Q. Now, Mr. Glenn, do you have the cost changing a lessee dealer—that is, when one dealer goes out and another one comes in—is there a cost factor that can be applied to that situation? >

George H. Glenn, for Respondents—Direct

A. Yes, sir, there is a cost in connection with the change over of dealers at service stations. Our records are not regularly maintained to display the specific cost attached to each change that is made.

However, we periodically do analyze our records and determine information from our various divisions as to the number of changes and the costs of those changes. We have done that most recently and have arrived at the figure applicable to changes that were made within a year, including (6266) parts of 1957 and 1958.

By Mr. Lorenzen:

Q. What are those figures? A. Well, I think that I should explain first, before giving you the figures, that in case it isn't fully understood that there are really two distinct kinds of dealer changes.

There is a change where a dealer either without notice, which happens, or with notice, and when we did not have a sufficient opportunity to find a replacement, leaves a service station and it is unoccupied for a period of time. That is a relatively expensive change-over.

Then there is the second type of change-over, which is those cases where a dealer has indicated a desire to give up his lease on the service station, go into some other business, take another service station with a competitor or whatever the case might be, and we have readily available a suitable replacement for that dealer and in that case the expenses are less because we don't have the period of lack of occupancy in the station for which we have carrying charges and expenses.

Based on the survey which we made, we attempted to define the kinds of expenses that we felt would be logical to a change-over in dealers. Those having to do with rental or carrying charges versus rental collections, mer-

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chandise (6267) and rental charge office, which are quite a common occurrence in dealer changes, the cost of preparing a service station for the new dealer, the time consumed in actually seeking out a new dealer, which in many, many cases can be quite time consuming and costly, the cost of training a new dealer, and whatever cost is involved in assisting the new dealer in the opening of the service station.

So, as a result, anyway, of including those things and determining the information from our divisions, determining further that our changes are made up generally about one-third of them representing dealers who have left the location and that it is unoccupied for a period of time and two-thirds where we have an immediate replacement, the figure varies from a low of \$600 for the immediate replacement to as high as \$1700 to \$1800 for those where you have an unoccupied service station or an overall average of something less than a thousand dollars, \$900 to \$995.

Q. Now, in those figures have you included the loss of revenue to the Texas Company due to the inability to sell products during a dealer change? A. No, the detail that I provided as to what we did include was to the exclusion of everything else. We do not take into consideration the loss on earnings or profit or whatever you may want to call it from our own merchandise or from any sponsored TBA merchandise that might have been (6268) sold through the location.

Q. And that loss could be many times the figure that you have given us? A. In different parts of the country and under different conditions it can be varied amounts and considerable.

Q. And depending upon how long the station has to be closed as a result of the change-over? A. That is right, how long it is unoccupied, yes, sir.

George H. Glenn, for Respondents—Direct

Q. Have you taken into account the fact that customers are lost when there is a change-over from one dealer to another? A. Not in this computation.

Q. Nothing has been given for that at all? A. We have not.

Q. This is just what you have calculated to be the out-of-pocket expense of the change-over? A. That is right.

Q. Without any respect being paid to the loss of revenue? A. That is correct.

Q. Whether from loss of customers or actual loss of sales while the station is closed? A. That is right.

Q. Mr. Glenn, have you analyzed the Commission's Exhibits 119 and 211 and 213? A. Yes, sir.

Q. And prepared a study showing that analysis? (6269) A. I have, sir.

Mr. Lorenzen: I ask to have this study marked as Exhibit 82.

(The document referred to was marked Respondent's Exhibit 82 for identification.)

By Mr. Lorenzen:

Q. Is this document, marked RX-82 for identification, that study? A. Yes, sir, it is.

Q. Will you tell us what that document shows? A. Well, first the information that is displayed on this document is translated from the raw material on CX-119, 211, and 213. Its intent is to display the comparative data on C and D TBA accounts for the year 1956 versus 1952 wherein, for example, we see that the number of C accounts in the year 1956 had increased percentagewise by 10.64 percent over 1952. I may inject here, too, that that figure is a very conservative one to the extent that we actually opened more stations than the difference between the

George H. Glenn, for Respondents—Direct

11,855 and the 14,116. On the other hand, we abandoned some locations, or lost some locations. But by and large, our new ones were of a better quality type. So that, if we had all of the stations without losing any, we would have had an increase of about 30 percent rather than the 19.

Again, in the group of C stations, their number to the (6270) total C and D stations in 1956 had increased over 1952 by 6.54 percent. Their gasoline volume had increased by 31.82 percent, and their share of the gasoline volume to the total as between the C's and D's increased by 6.58.

Now, on the other hand, so far as the D's are concerned, we see practically a complete contrast, wherein the number of accounts had declined by 8.85 percent, the share of those accounts to the total as between the two has decreased 6.54. The gasoline volume through those accounts as contrasted to the 31.82 percent increase for the C's, for the D's, is a loss of 2.34, and as to the share of the gasoline volume in total between the two classes of accounts, of course, dropped 6.58.

The purpose of this display of information is to reflect that it is as a result of the growth and development of the C type of account and the lessening in numbers of the D's, that it follows naturally that C's have picked up a substantially greater part of the gasoline volume and it follows that they, too, have picked up TBA volume. It is interesting to note here that the percentage of the TBA volume to the total they picked up is not very different than the percentage of the gasoline that they picked up for the total, the difference between approximately 2 percent.

One thing that is troubling you, I know this, Mr. Lorenzen, if we might make a correction, I would like to (6271) have a correction made that the parenthetical figures on here represent decreases, which isn't entirely clear.

George H. Glenn, for Respondents—Direct

Q. That the figures in parenthesis shows decreases?

A. Yes, sir.

Q. In percentage? A. Yes, sir.

Q. And the ones without the parentheses are plusses?

A. That is right.

Q. So you show in all categories, gain in C accounts, and in all categories a lessening in the D account figure?

A. Not necessarily a correction. It is an addition to what I said.

Q. Now, you said that if the number of accounts—I will withdraw that.

The number of accounts shown on these government's exhibits, C accounts, shows only a net increase; is that correct? A. That is correct.

Q. So that while this might indicate that only some 3,200 new stations were opened during this time; — in fact, the figure should be what, pretty close to twice that? A. Well, did you say 3,200?

Q. Yes. A. You apparently did that hurriedly. I don't think that is the right number. My number is a little different.

(6272) Q. What is your number? A. Well, this number on here is nearer 2,300.

Q. I see. And what should it be?

Mr. Dias: Excuse me. When you say this number here, will you refer to the line?

A. Line 1 under the caption C accounts, the two columns, 1956, 14,116, and the caption 1952, 11,858, and the difference between the two I hurriedly deduct as being 2,300. It is probably 2200-something.

Mr. Dias: I see.

A. And the figure that I would offer in answer to the question you asked is approximately 3,100 stations.

George H. Glenn, for Respondents—Voir Dire

By Mr. Lorenzen:

Q. So that actually old type stations have been replaced by 3,100 new type stations? A. That is right.

Q. Rather than the 2,300? A. Rather than the net 2,300.

Q. But the exhibits in evidence don't provide for that? A. No, sir.

Q. And you made your computations on that basis? A. On the basis of what is shown in the exhibits, yes, sir.

Q. Rather than on the actual situation which would increase the percentage of C stations above this 19 percent figure shown on the exhibits? (6273) A. It would bring it to about—

Q. If you took the actual situation, it would be thirty percent of the new stations? A. That is right.

Q. As against that the gain in TBA was 8.85 percent? A. That is correct.

Mr. Lorenzen: I offer this document in evidence.

(6274) *Voir Dire examination by Mr. Dias:*

Q. If I understand the document, these figures here were obtained from the designated Commission exhibits?

A. Yes, sir. Let me perhaps qualify that for a little bit.

Q. Except for the percentages you have worked out?

A. We had to work some of them out from the raw material in the basic Commission documents; yes, sir.

Q. Then all the conversation of what might be the situation has no bearing on this, actually? You have used the actual figures that show on these Commission's exhibits, isn't that correct? Insofar as the number of accounts, the basic figures— A. I think you have asked two questions, but I am trying to answer both of them.

George H. Glenn, for Respondents—Voir Dire

Q. All right. A. No. 1, I have used all the material taken directly from the basic CX documents. However, the answer that I gave to the question as to whether or not the number of stations was net or gross I felt had a bearing on the results that are shown here.

Q. Well now, that is what I was trying to determine.

How do you arrive at your percentages? Do you arrive at the percentages on the basis of figures that are shown (6275) in those Commission exhibits? A. That is correct.

Q. The other part of your answer had to do with a question posed by Mr. Lorenzen which doesn't relate to these exhibits, is that correct? A. It relates to the fact that the exhibits do not include the additional stations which we opened and some of which were offset by locations that we abandoned or in some other way lost.

Q. I don't think I follow that because these basic figures came from Texaco's files, isn't that correct? A. That is correct.

Q. CX 119, 211, and 213. When were these additions and abandonments, when did they take place? A. They were during the period 1952 to 1956.

Q. Well, then, don't the changes in numbers show on these exhibits? A. I think probably the thing that is bothering you, if I may try to answer it this way, is this: There is a difference between quantity and quality in these numbers. We are looking here on the report as quantity. There are 11,858 stations in 1952 and 14,116 stations in 1956. But behind this increase of 2300 locations there have actually been over 3,000 acquired, and those 3,000 quality-wise represent the addition of the 2300 and the offsetting of (6276) some 700 or 800 lower quality outlets that were abandoned as service station outlets.

Q. What is this change, 19.4 percent, based on? That is based on the difference between— A. The figures you see there.

George H. Glenn, for Respondents—Voir Dire

Q. Then, regardless of this quantitative or qualitative change, or any changes of that sort that may have occurred, it has no bearing whatsoever on these figures that you have here; isn't that correct? A. It is not included in these figures.

Q. Now, take the second line, percent accounts to total? A. Yes, sir.

Q. 40.11 percent? A. Yes, sir.

Q. How do you arrive at that figure? A. Well, you have got in 1952, you had 11,858 C accounts and 17,708 D accounts, both of them added together, 29,566, and 29,566 divided into 11,858 is 40.11.

Q. All right.

Then similarly for the 56.65, you take the number of C accounts and add to the number of D accounts? A. That is right.

Q. Now, on the total gasoline volume you have a hundred percent figure on the '52? A. Yes, sir.

(6277) Q. Is that—in other words, you are using that '52 as the base? A. As the base.

Q. That is right. And in '56, then, the increase in gasoline volume in the C accounts went up 31.82? A. That is right.

Q. And the base figure is shown again in one of these three exhibits, CX 211 possibly? A. The gallonage figure?

Q. The gallonage, yes. A. CX 211, yes, sir.

Q. And, as I recall, the gasoline gallonage the last time you were here was given in barrels and you have translated it now into what, have you translated it into gallons or does it make any difference? A. For the purpose of this report it doesn't make any difference.

Q. All right, so that we can compare— A. You can compare these numbers; yes, sir.

Q. All right.

George H. Glenn, for Respondents—Cross

(6279) *Cross-examination by Mr. Dias:*

Q. This line of questioning will deal with your testimony in connection with the cost to Texaco in the change-over of dealers. A. Yes, sir.

Q. As I understand it, in arriving at these figures, that it costs Texaco between \$600 to \$1700 or \$1800 or an average of a thousand dollars whenever there is a dealer change. You mentioned that you computed in those figures two kinds (6280) of changes, where a dealer left you with or without notice in one instance, and in the second instance where the dealer gives up a lease.

Now, how do you distinguish between those two types? I can understand— A. No, go ahead, I am sorry. Go ahead.

Q. All right. Just to distinguish between those two types now. A. I think I did distinguish them. I will try to repeat what I said.

Q. Will you do that, please? A. I described that No. 1, in the case of a dealer who chose to give you the location and without notice left us and we had an unoccupied station, or with notice but not of sufficient time to permit us to find someone to put in by the time he wanted to get out.

Q. All right, what was the second one? A. The second one is where the dealer voluntarily wants to make a change, does so in a very orderly way by advising us either directed to the anniversary of his lease or very often to some period in between the anniversary when he says "I would like to get out," and he is there long enough or stays there long enough, or we are successful enough to find a replacement, by the time he wants to get out.

Q. All right, now, in arriving at this average cost in (6281) a dealer turnover or change, those are the only two type situations you consider, is that correct? A. Yes, sir.

George H. Glenn, for Respondents—Cross

Q. Well, you don't imply, do you, that Texaco never cancelled or failed to renew a lease? In other words, put the shoe on the other foot, in those instances where Texaco cancels or fails to renew a lease, is there no charge in connection with that? A. Yes, it is dealer turnover.

Q. Yes, but you didn't consider that in arriving at this average thousand dollars? A. You mean from the standpoint—no, my dealer turnover includes all dealer changes.

Q. In other words, whether initiated by the dealer or Texaco? A. That is right.

Q. So that figure would not be changed then, it would still be this \$1,000 average that you have? A. That is right.

Q. And does Texaco always repair stations when the dealers change or turn-over? A. Mr. Dias, it is a very strange thing, I suppose it takes place in all sorts of establishments, but you can have a man in a service station very happy and pleased with his operation for many years with no complaints, nothing is (6282) wrong, and he vacates that location. And you then go about trying to find a replacement dealer, and that replacement dealer competitively this is—the same situation exists with all people—that new dealer wants things different than they were there before. He wants this painted and he wants this repaired; he wants a little better lighting than was there before, and we find it necessary to attract proper dealers to operate service stations, to spend money at the time of change-overs, yes, sir.

Q. For example, yesterday one of your witnesses testified that an operator left after being in a station for three months. In a situation like that would you go in and make some sort of repairs? A. Well, I don't like to belabor this particular point by a lot of explanation, but I would like to offer this. The things that can happen to a service

George H. Glenn, for Respondents—Cross

station in three months can cost a lot of money. For example, if a dealer is in a service station and has neglected the premises, if it is at a time of the year and in the part of the country where such things as weather affect the location, pipes freeze, rest rooms are out of order, the dealer has used some manner or means of his own to improvise electrical arrangements in the service station; any one of those things can happen and just the cleanup, many times, for a dealer that is an unsatisfactory one can be quite expensive.

(6283) Q. How many situations of this sort have you studied in order to arrive at the average that you gave us?

A. How many turnovers?

Q. Yes. A. I'd rather get the number accurately out of my records, but I will give you a rough number at the moment if you want it.

Q. All right. A. It is somewhere in the vicinity of five, six, or seven-hundred stations.

Q. Five-, six- or seven-hundred stations over what period of time? A. Over the period of a year overlapping '57 and '58.

Q. You have that many changeovers in a year's period?

A. Yes, sir.

Q. You also mentioned that there is something about loss of productivity during that period. Wouldn't that be as a result only of the loss of the rental for the station as long as it has been vacated or lies empty? Isn't Texaco profit computed in its rental? A. That is just one of the items. We considered rental in the cost factors because it is a specific, tangible figure that we are responsible for and must assume and pay whether the station is open or not.

Now, if that station was open and the dealer was (6284) buying product I hope we would make some profit on the product that he bought from us, and if he happened

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to be a dealer that brought sponsored TBA I would hope that we would get some return on that.

But we have not accounted for either of those items because they are not sufficiently tangible to write up. We don't know what they cost.

* * *

(6308) ELIHU MADISON was thereupon called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Lorenzen:

Q. Will you state your full name, Dr. Madison, and tell us where you live? A. My name is Elihu Madison, 10 Fordal Road, Bronxville, New York.

Q. In spite of that name Elihu I notice you didn't go to Yale? A. No, I did not, I am expressing no regrets for not having gone.

Q. I didn't go either so there is no hard feelings.

You received a Bachelor of Business Administration Degree, did you, at Texas University? A. University of Texas, yes.

Q. What was that in, a major or in what? A. Accounting.

Q. And then you have a Master of Business Administration Degree and that was with a major in finance? A. At New York University.

(6309) Q. And a Doctor of Philosophy in Economics, and that was also at New York University? A. Major field economics, yes, sir, at New York University.

Q. Are you now connected with the Texas Company? A. Yes, I am manager of the Economics Department of the Texas Company.

Q. And what are the functions of this economics department in your company? A. I would summarize them

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to say that we keep management informed on the current and prospective economic, financial, and political conditions, both domestic and foreign, as they apply to the oil industry and to Texaco with particular emphasis on financial planning.

We also do special projects for various executives in the company on request.

Q. And are those special projects which have to do with finance and financial trends, matters of that kind? A. Yes, that is right.

Q. Then are you called upon to analyze a variety of problems and find solutions to them? A. An extreme variety.

Q. Some of your projects are handled easily and some take a long time? A. Yes, some we may do with dispatch, others it may take several months.

(6310) Q. You were connected with the Texas Company before the time when you became manager of this economic department, were you not? A. Yes, I started with the Texas Company in the accounting division in Houston in 1933, that is the accounting division of the refining department.

Q. And how long did you stay in that department? A. Well, I stayed in the refining department for a number of years.

In 1931, I believe it was, I was shifted over to Port Arthur, our large refinery on a training course; then in 1933 I was moved to New York to the managerial division of the refining department, and I stayed in the refining department and I became a supervisor there, and in 1946 I was transferred to the executive department as economist.

Q. Then for a while you were in the foreign operations department? A. Yes, in 1947 I was shifted to foreign operations, I was assistant to management in that department.

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Q. Then in 1949 you became manager of this economics department? A. Yes, that job I still hold.

Q. Since that time have you been with the company continuously? A. Yes.

Q. At one time— (6311) A. I was on a so-called leave for about eight months in 1953 and 1954. At that time I was assigned to the Department of Interior and I was director of the program division of the petroleum administration for defense. While I was in that job I served as a representative for the State Department for, well, on several occasions as a representative to the petroleum committee of the NATO organizations, that is the North Atlantic Treaty Organization that is in Paris.

Q. Now, as one of these special projects which you had to undertake every once in a while were you asked to make a study of exhibits in this case showing the purchases of Firestone and Goodrich TBA under the sales commission plan from 1948 through 1955 and reduce those purchases to, I believe what you call, constant dollars?

A. Yes. Sometimes referred to as a process of deflation.

Q. You started with the dollar at a level which for this process let's say you called a hundred? A. That is right.

Q. And then applied any variation in the value of that dollar to the actual sales figures, is that what you did?

A. That is right, yes. We used 1948 as equal to a hundred.

Q. Well now, to make it simple, can you give us a small example, we are not dealing with these figures in here, can you just give us a small example to show just what you did? A. This will be purely a hypothetical figure.

(6312) Q. Yes.

Mr. Dias: Excuse me, would it help to use the blackboard and chalk.

Mr. Lorenzen: I don't think we need it, I think this will be simple.

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A. Take a case, say in 1948, a first quality battery was selling at \$5. Total sales we'll say were \$75, you had fifteen battery sales. By 1955 your battery sales were \$125, but the price of that first quality battery had gone up to \$25. So that actually you had sold the same number of batteries in 1955 as you sold in 1948 and we would reduce those to 1948 dollars and come out with the conclusion that although there had been a substantial increase in the dollar sales there was zero increase in the deflated dollar sales.

Q. So that the sales manager who looks at the figure 75 and then looks at the figure 125 some years later is kidding himself if he thinks he is succeeding in increasing his sales by that amount? A. He is dealing with misinformation if he does not deflate it.

Q. In fact, he sold five batteries in 1948 and he has only sold five batteries in 1955? A. Right.

Q. And any apparent increase on the face of the figures results simply from the fact that the value of a dollar in (6313) the term of batteries has gone down. A. That is right.

Q. Now, the process which you have applied to deflating these TBA figures from 1948 to 1955 is exactly what you have described in this entirely hypothetical case that you have taken with respect to five batteries? A. That is the same general procedure.

Q. And we have had marked here as exhibits for identification RX-84-A, 84-B, 84-C, and 84-D, some tables, and I ask you whether that is the finished process which you have utilized in connection with these tables? A. That is the general procedure that we have followed in these tables, or that I followed, in establishing the constant dollar series shown as column 2 on table 1.

Q. Now, what sources did you consult in connection with deciding whether or not the value of the dollar in terms of TBA has gone up or has gone down? A. Since

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we were dealing here with wholesale prices we used the wholesale price index.

Q. Published by whom? A. By the Bureau of Labor Statistics.

Q. That is a government publication? A. That is right, yes, sir.

Q. And is that one which is regularly relied on in your industry in making economic analyses? (6314) A. Yes, that is used extensively in economic analysis.

Q. Were you able to find in that index one price which covered all TBA, or one index figure which covered all TBA? A. No, there is no series that covers TBA as such.

Q. Did you find some figures which covered the constituent parts of TBA? A. We found a series that covers specifically tires and tubes and we found a series that covers batteries.

Q. So what you had to do is separate out from total sales tires and tubes on the one hand and batteries on the other and then accessories as a third item, is that right? A. That is right.

(6315) Q. We will come to accessories in a minute because that, I think, is a little special problem and let's just see what we have done on tires and batteries.

Now, look at Exhibit 84-A. I am going to take you to 1952 because those figures are on one exhibit; it is easier than to go to several of them.

In 1952 your total Goodrich sales under the sales commission plan are numbered 12,746; is that correct? A. Right.

Q. Rounded off? A. That is right.

Q. It says it is in thousands of dollars? A. Yes.

Q. The legend at the top of the column—I have to add three more ciphers. All right, 12,746,000. You have left out the last three digits in each case and rounded them off to the nearest thousand? A. Right.

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(6316) Q. So, the total figure which appears in column 1 is the figure which appears on one of these exhibits in the record? A. Right.

Q. Now, Column 2 is the result of your having applied the deflators to the figures in Column 1? A. Not precisely, because the figures in Column 1 were broken down as—

Q. Yes, I am coming to that. But whatever you found the deflators to be was applied and the result appears in Column 2 opposite the same year? A. That is correct.

Q. In other words, Column 2 you can not find in an exhibit? Column 2 is not in an exhibit? A. That is right. It is not in any other exhibit.

Q. That is the end product of this particular computation? A. Right.

Q. All right. Now, let's look at Exhibit 84-B, which is Table 2. 84-B shows the technique which you applied in getting at or computing the net result which appears in Column 2 of Table 1, or Exhibit 84-A? A. That is correct.

Q. You testified now that you found Bureau of Labor wholesale price index statistics for tires and tubes, so what you (6317) had to do first is out of the total of 12,746,000 for 1952, as an example, you had to find out how much of that was tires and tubes? A. Right.

Q. And on Exhibit 213-A, under 1952, you find a column headed, "tires and tubes." A. That is right, yes, sir.

Q. And so that was perfectly simple. All you had to do is take out the figure appearing on Exhibit 213-A in the case of Goodrich and 213-B in the case of Firestone, and then get the Bureau of Labor price index for tires and tubes and apply it? A. Not directly. The reason for that is that the Bureau of Labor Statistics index is based on a 1947-49 equal of 100, so, since we were beginning with the year 1948 we converted that to show 1948 as 100.

Q. I see. The Bureau of Labor Statistics used what, 1947-48-49? A. 1947-48-49.

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Q. As a hundred? A. As a hundred, yes.

Q. But the figures in evidence in this case started with 1948? A. Right.

Q. And not with 1947? (6318) A. That is correct.

Q. So you didn't want to use 1947 as a hundred, but 1948 as a hundred? A. 1948 is the base year. 100, yes.

Q. You have made no change in the Bureau of Labor Statistics other than for the purpose of this study, calling the 1948 figure 100? A. That is all.

Q. So applying the percentages you have done it from the actual 1948 base as shown by those statistics? A. Yes, sir.

Q. And that index indicates that there is a slight decrease in value in 1949? A. Right.

Q. So, what would you say, that is 2.9 percent? A. 2.9 percent decline in 1949.

Q. Then, in order to get the tire and tube figure on a corrected basis, you would apply that 2.9 figure to the tire and tube figure shown on Exhibit 213 in this case? A. Right.

Q. From then on the Bureau of Labor Statistics price increase has gone up and in each case you would apply the increased percentage to the tire and tube sales shown on the exhibit for that particular year? A. Yes, you would divide it into the figure shown.

(6319) Q. And that was one of the components, then, of the deflated figure shown in Column 2 on Exhibit 84-A?

A. That is right, yes, sir.

Q. We have taken care of one of the components now?

A. One of the components.

Q. Let's see the difficulty with batteries. Why couldn't you apply exactly the same technique in connection with batteries? What was the trouble there? A. We had no record showing batteries individually for any year in this series, other than 1955.

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Q. Then the Texas Company's records, as the evidence in this case shows, and as Exhibit 213 shows, did not have a separate breakdown of batteries as distinguished from batteries and accessories until the year 1955? A. Yes, sir.

Q. So, in order to apply this deflating factor, which you found in the Bureau of Labor Statistics for batteries, you had to find some way to determine how much of the battery and accessory sales consisted of batteries? A. That is correct.

Q. And how did you do that? A. I looked at the figures for 1955 and 1956 as well as—I looked at them for 1957, and there was a high degree in consistency in the percentage, that is, the ratio of batteries to total TBA.

(6320) Q. Do you recall what percent you found to be that ratio? A. In the case of Goodrich, that ratio was 9.5 percent as I recall it. And in case of Firestone the average for 1955 and 1956 was 6.3 percent.

Q. So that you assumed that for the years 1948 to 1955 that ratio would hold constant because it appeared to be quite constant for the two years for which you had the figures? A. We used that assumption, yes.

Q. Now, there is some evidence in this case that the battery sales increased quite materially, at least in some sections of the country, with the advent of the dry-charge battery commencing in 1952, which would mean that your 1955 and 1956 statistical percentage might be on the high side.

Now, if you assumed that and if you had taken batteries as being a smaller amount before 1952, what would have been the end result? Would the deflation have been more or less? A. Well, since the inflation of batteries over the period 1948 to 1954 was only about one percent and all other components increased considerably more than one percent in price, to have used a lower percentage component on batteries would have resulted in a higher real increase in the overall TBA.

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Q. I guess that is right. I think you left me at that point.

(6321) Anyway, if the more batteries that you put in here the more effect you would give to this very low increase? A. The more we put in the more effect. May I correct that? I believe I said that incorrectly in reply to your question a moment ago.

The more of the batteries that go—the greater proportion of batteries that go into the index—the index increased only one percent for batteries.

Q. So that the more batteries you weighted this thing with, the less inflation there would be?

Mr. Dias: No.

Mr. Lorenzen: Sure, that is right.

By Mr. Lorenzen:

Q. The more batteries you throw into this computation, the less— A. Less inflation there would be. That is correct.

Mr. Dias: May I suggest that the expert testify?

The Witness: I will correct that. The larger the number for the batteries or the larger the proportion of batteries, the lower would be the degree of inflation.

By Mr. Lorenzen:

Q. If you had, let's say you used this 9.5 percent just to make it concrete, and you carried it all the way back to 1948. There would be very little inflation of any kind shown at all, because you only had one percent. (6322) A. That is correct, with respect only to batteries.

Q. With respect only to batteries; that is the point. A. That is right.

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Q. So, if you give credence to the testimony here that the years 1952 to 1955 show a higher percentage of battery sales than before that time, and you had used a smaller amount of batteries back there in 1948, 1949, 1950, and 1951, then you would have given less relative effect to the one item on this list which shows a very small inflation?

A. That is correct.

Hearing Examiner Kolb: Doesn't price have anything to do with it?

Mr. Lorenzen: Not other than the index. The Bureau of Labor Statistics index was cited here and which, of course, is available to Mr. Dias, in fact, which his department is checking, has it. I mean, there has been—oh, we have had some evidence as to average costs—

Hearing Examiner Kolb: Are you using the deflation of the dollar generally, even though the price of batteries has remained constant all this time?

Mr. Lorenzen: No. The Doctor said that the price of batteries has inflated least. That is why we broke them out separately to be fair about it, because batteries are the one thing which has in terms of dollars become cheaper.

(6323) I don't know, I suppose more competition or something in the battery line than other places. Maybe the materials are cheaper. But anyway, it is an outstanding item of inflation affecting the situation much less than either tires or tubes or accessories or goods in general. That is why we wanted to take it out separately, to be fair about it.

By Mr. Lorenzen:

Q. Now, having broken batteries out of Exhibit 213, you came at a dollar figure for batteries, did you? A. Yes, I had a dollar figure for batteries.

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Q. And you applied to that the price index variation shown in Table 2, Column 2, of Exhibit 84-B? A. Yes.

Mr. Lorenzen: I think this answers your Honor's question. If you look at the percentages in Table 2, in Column 2 as distinguished from the percentages in Column 1, your Honor can see the difference which inflation has had in terms of tires and tubes and which it has been in terms of batteries. You see, the index is quite different in the two.

By Mr. Lorenzen:

Q. Now, we will come to accessories. Having the tire and tube figure and having taken out the battery figure, all the balance of course became accessories; is that correct? A. Other accessories we called it.

(6324) Q. Other accessories? A. Right.

Q. Now, what did you find with respect to the existence of a Bureau of Labor Statistics wholesale price index covering accessories? A. There is no specific Bureau of Labor Statistics series or index on other TBA and this presented somewhat of a problem.

Q. How did you solve it? A. Since there are more than 500 items in this other TBA series of a very diverse nature, it was concluded that the best deflator for this series was the Bureau of Labor Statistics wholesale commodity price other than farm products and foods.

Q. And that is the inflator which you have set out in the last column of Exhibit 84-B, Table 2? A. Yes. Well, that is not directly the last column is not the Bureau of Labor Statistics series. It is the 1947-49 series which is shown in the next to the last column converted to a 1948 base.

Q. Well, as you explained before in connection with the other tables? A. Yes, the same procedure.

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Q. The same procedure but those are the figures which appeared in the Bureau of Labor Statistics wholesale price (6325) index for commodities other than farm products and—what is the other one? A. Other than farm products and foods.

Q. Farm products and foods.

Now, did you check the conservatism of accepting that price index as against any price index covering some items in the accessory line? A. There were some items that we found in the series that were directly applicable. For example, fan belts. But I might point out here that when we are talking about over 500 series, when we talk about an individual item, it is not really too significant here, but we did pick out several items and on averaging them up we found that they showed an arithmetical average over the period of something like 30 to 35 percent.

Q. So that if you had used the few comparable items for which the Bureau prepares statistics, your percent of inflation here, instead of being 13.2 percent, would have been somewhere in the 30 percent range? A. Well, if we had used it on those few items. But I might say that we did not—that is, I did not check the entire five to eight hundred items against all of the individual items in the index. But had we used those that we found matching, we would have used some higher number rather than the eleven percent increase as shown for the period 1948 (6326) to 1954 in this series.

Q. Well, you did check it against the principal items such as fan belts? A. Fan belts.

Q. What else? Do you remember what the others were? A. Oh, there were battery cables, some battery wires, there were no index for items such as spark plugs or some of the other more important items.

Q. And you did look for the more important TBA items? A. We looked for the more important, yes, sir.

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Q. And those few that you did find averaged substantially more inflation than the index figures which you have actually used? A. Those particular ones that we found, yes.

Q. And so, do you believe that this figure which you have taken is a conservative figure which, in your work, you would estimate as an expert could be properly applied to the accessory items? A. I would say it is a conservative figure, the 11 percent is.

Q. Then you applied this figure in the last column on Exhibit 84-B to the accessories and you determined them by the process which you have described and then added together the deflated tires and tubes, the deflated batteries and the deflated accessories to come up in each year with the figure (6327), appearing in Column 2 of Table 1, Exhibit 84-A? A. That is correct, yes.

Q. That is the way in which each of the figures appearing under B. F. Goodrich and Firestone in Column 2 was arrived at? A. Yes, they were computed separately.

Q. And what is the combined, is that just an addition? A. It is the total of the two, yes.

Q. Now let's look at Exhibit 84-D.

Hearing Examiner Kolb: Exhibit 84-D?

Mr. Lorenzen: Yes. C is a little different. We want to look at 84-D now.

By Mr. Lorenzen:

Q. Tell us whether or not you applied the same techniques in connection with Columns 1 and 2 of Exhibit 84-D? A. Yes, the same techniques and procedures were followed in deflating these figures.

Q. Now, the only difference between Columns 1 and 2 on Exhibit 84-D and the combined figure in Columns 1 and 2 on Table 1, Exhibit 84-A, is that in 84-D you limited

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yourself to dealing with sales to the so-called C stations?

A. Yes, that is correct.

Q. Otherwise, everything you have done and testified to here applies equally to 1 and 2? A. The same procedures and techniques apply, yes, sir.

(6328) Q. And the sales volumes for C stations only, you took from these Exhibits 120 and 121 except for the years indicated when you took them from your own company records, Form S-1213? A. The gasoline sales volume—

Q. Wait a minute. We are talking only about Columns 1 and 2. A. I am sorry. I thought you had gotten over.

Q. No. A. Columns 1 and 2 were taken from those indicated exhibits.

Q. Column 1 was taken from the indicated exhibits and then Column 2 is the deflated value of Column 1? A. Yes, that is right.

Q. All right. Now, let's look at Column 3. Those are gasoline figures and will you tell us what the source of those is? A. Well, those are C account gasoline sales and for 1952 to 1955. They were taken from Exhibit CX-211. Exhibit CX-211 shows gasoline sales in barrels and we converted those to gallons. For the years 1948 to 1951, they were taken from the annual reports of the Texaco sales department.

Q. All right. Now, let's look at Column 4. In order to arrive at this TBA sales per thousand gallons, to get Column 4 you simply divided Column 1 by three; is that right? A. Column 1 divided by Column 3 equals Column 4.

(6329) Q. And in order to get at Column 5, you divided Column 2 by Column 3? A. By Column 3, get Column 5, yes.

Q. So that the Column 5 shows in terms of TBA a thousand gallons of gasoline that there has, in fact, been

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a decrease in terms of deflated dollars in the sale of TBA for a thousand gallons of gasoline? A. Yes.

Q. That would mean that the sale of gasoline in quantities to the Texaco C stations was more than the increase to those same stations of TBA in terms of goods rather than in terms of dollars? A. In terms of estimated real goods, yes.

Q. So, if you discount the effect of the inflation of the dollar, the ratio of Firestone and Goodrich TBA sales to C stations was less in 1955 than in 1948? A. That is right, yes, sir.

(6330) Q. Now, let's look at Table 84-C.

In Exhibit 84-C, which is Table 3, as I understand it your Column 1 states the total TBA which you have shown as Column 2 combined of 84-A, only you state it now in terms of the price index rather than in terms of dollars? A. With 1948 as 100, yes.

Mr. Dias: Excuse me; will you read the question again, please?

(Question read.)

By Mr. Lorenzen:

Q. The answer was Yes; let me explain it a minute. A. Yes.

Q. The figure 34,187,000 which is the 1948 figure you have stated to be 100 in Table 84-C? That is the basis; is that right? A. That is correct; that is 100.

Q. 100. Now, in 1949 your figure on 84-A is down, it is 28,819, and you applied the percentage of decrease and therefore come up with the figure 84.3 on Table 84-C? A. That is right.

Q. And that is all you have done in each one of the figures on 84-C as you go down this column states in terms of percentage the increase or decrease of the figures shown

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in column 2 on Exhibit 84-A? A. It is not the increase or decrease, of course, the (6331) increase and decreases are reflected there, but they are all subsequent figures, are expressed as a percentage of the 1948 figure.

Q. That is right. So that your total sales increase for 1948 to 1955 in terms of these deflated 1948 dollars is 16.6 percent? A. Yes, that is correct.

Q. And that has been the total real increase, the increase in terms of goods, in TBA sales under this sales commission plan as between 1948 and 1955? A. That is the estimated real increase; yes, sir.

Q. Now, let's have a look at the next column. In Column 2 you have taken the same years and you have made a similar computation in terms of percentages based on 1948 of automotive gasoline sales by the Texaco Company; is that correct? A. That is by the 15 divisions of the Texas Company. That is not the total Texas Company gasoline sales but it is the sales of automotive gasolines by the 15 divisions that cover the entire country.

Q. And you have taken out of any gasoline figures aviation gasoline sales, Naptha gasoline sales and sales were credited to the New York Executive Office? A. Yes. That is Naptha, not Naptha gasolines.

Q. Yes, Naptha. You believe that judged by the standards of the work that you do it is fair to compare the deflated (6332) total TBA shown in Column 1 with the division automotive gasoline sales shown in Column 2? A. Yes, the automotive gasoline sales being physical quantities do not need deflation and they are appropriately comparable with the deflated TBA.

Q. So that in quantity your automotive gasoline sales have increased from 1948 to 1955, 37.5 percent? A. That is right, compared with the 16.6 for TBA.

Q. Now, how about Column 3, what do you compare there with the increase in TBA sales under the sales com-

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mission plan? A. In Column 3 we followed the same technique in comparing passenger car registrations, those figures are published by the Bureau of Public Roads. We again used 1948 as a hundred and convert the subsequent figures to percentages in terms of 1948.

Q. Now, those figures, too, are immune from inflation in the sense that they represent units and not dollars?

A. Physical units, yes.

Q. Physical automobile units? A. Right.

Q. And Column 4, tell us the source of that column and what you did there? A. Column 4 is also based on estimates of car miles travelled by passenger cars as published by the Bureau of Public Roads, and again we use the same technique of expressing each (6333) year as a percentage of the 1948 figure.

Q. Based upon your experience, will you state whether you believe it fair and reasonable to compare the increases shown in Columns 3 and 4 in the neighborhood of 50 percent with the increase in TBA shown as 16 percent? A. Yes, those are physical measurements and both the passenger car registrations, the miles they travel, and the gasoline sales, they are all basic elements in—that is, the demand for TBA is derived from those basic factors.

Q. That is the demand for TBA you believe can be judged in terms of automotive gasoline sales, in terms of passenger car registrations and in terms of passenger car miles travelled? A. Yes. Not in absolute amounts but in the general direction.

Q. Now, in making these studies, Exhibits 84-A, -B, -C, and -D, will you tell me whether you have applied the same standards of accuracy and trustworthiness which you apply in making your reports to Management in the course of your business? A. My answer is definitely Yes.

Q. Will you tell me whether or not you have applied to Exhibits 84-A, -B, and -C, the same types of methods

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and procedure which you use in preparing studies for the Management of your Company? (6334) A. Yes. We would not ordinarily have a problem, that they call for these specific series of applications, but the techniques and the procedures are the same.

Q. And is this deflated technique which you have used here, one which is unique or unusual, or is it regularly applied in your industry? A. It is used extensively in economic analysis.

Q. Have you made three charts which reflect in graphic form the computations set out on Exhibits 84-A, -B, and -C? A. Yes.

Q. Are these papers which have been marked Exhibits 85-A, -B, and -C, such graphic illustrations? A. Yes, they are graphic illustrations of the data applying on the other exhibit, that is shown as Table 1, Tables 3.

Q. That is, if you took the dollar sales and didn't measure it in terms of merchandise you would come out on Exhibit 85-A with that solid black line? A. Yes, that is the one shown in terms of current dollars. It would show—

Q. And it would show an increase above your base line in 1948 of 39.9 percent plus 16.6 percent, or somewhere in the neighborhood of— A. 56.5 or 56.6.

Q. 56 percent.

Now, in terms of real goods, after you have deflated (6335) that figure how much is the actual increase in TBA sales from 1948 to 1955? A. The estimated real increase is 16.6 percent.

Q. And that is exactly the figure which you used in Column 1 of Exhibit 84-C? A. That is right, also in Column 2 of 84-A.

Q. Yes, that is if you translated that into a percent as you did into a percentage at the foot of that column that is what it is? A. Yes.

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Q. So this simply graphically illustrates the fact that a good part of the dollar increase is in terms of inflation and not in terms of goods? That is correct.

Q. Now, look at 85-B, is that a graphic illustration of the exact figures which you set out in Exhibit 84-C? A. Yes; that is correct.

Q. So the percentage of 16 shows there under deflated total TBA, and your second column shows increase in gasoline of 37 percent; your fourth column increase in passenger car registrations of 56-some percent; and increase in passenger miles in the last column of 52½ percent? A. That is correct. The same as the percentages on Exhibit 84-C.

Q. In 85-C, Column 4, is in that case reflected by the (6336) dotted line; is it not? A. I beg your pardon; repeat the question, please.

Q. Column 4 of Exhibit 84-D is reflected by the dotted line in the chart, Exhibit 85-C? A. In current dollars, yes, that shows the current dollar series from Column 4.

Q. And the lower black line which shows a decrease in TBA sales in terms of goods per thousand gallons is your Column 5 in Exhibit 84-D? A. That is right.

(6340) *Voir Dire examination by Mr. Dias:*

Q. Do you have anything to do with publishing the annual report for the Texas Company? A. From time to time I am requested to do some checking of figures on it.

Q. Do you deflate the current dollars for the benefit of your stockholders in the same way that you have done it here? A. You mean, in our earnings figures we are deflating?

Q. Yes; you know as you go across and you show progress from year to year, do you also include one of these

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tabulations deflating the dollars? A. You are thinking in terms of the 10-year summary?

Q. Yes. A. No, we do not do that.

Q. Do you know whether or not Texaco receives its TBA commissions on the basis of a deflated dollar or on the basis of current market values? A. It is my understanding it is on a percentage basis.

Q. Of the current market value? A. Yes, current dollars.

(6341) Q. Now, I think it is on table 848, can you tell us again how you arrived at the—strike that, let me ask you this:

In order to arrive at these battery sales figures during the years 1948 through 1954 you had to have some sales figures, is that correct? A. In the case of batteries we had the break-down only for the year 1955 of the years shown here. We did not have battery sales as such for the preceding years.

Q. I understand that. Go ahead. A. Then we took—there was a considerable degree of stability in the percentage that batteries bore to the total TBA sales in the years 1955 and 1956 which we had.

Q. Now, during the two-year period, namely 1955 and 1956, there was stability in the prices of batteries, is that correct, or in sales of batteries? A. No, it is in the—I was referring here in the ratio of battery sales to total TBA.

All right. Actually you are correct that there was considerable stability in 1954 and 1955 in the price of batteries. 1956, I don't have the index right at hand.

Q. Well, how did you determine that there was stability in the price of batteries in 1954 and 1955? A. Well, you have the price indexes here that are shown, you see in terms of 1947 and 1949 and 1954 it was 104.2, that is in the third column there.

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(6342) Q. That is the third column? A. And 104.6 on a 1948 basis it was 101.3 and 101.7.

Q. Now, that 101.3 and 101.7, that is after this adjustment you have made; is that right? A. It is the same figure expressed on a different base.

Q. But my question was how did you arrive at the dollar value of battery sales during the years 1948, 1949, 1950, 1951, 1952, 1953, and 1954? What was the ratio you took? Did you use a ratio? A. Yes, we used a ratio in the case of Goodrich that ratio was 9.5 percent of total TBA and in the case of Firestone it was 6.3 percent. I am sure that is approximately correct. It could vary one tenth of a point one way or the other, but that is my recollection of those particular figures.

Q. Then what did you do, take a common average of the 9.5, 6.3? A. No, we handled them separately, we did the job for Goodrich and Firestone separately and then we added them together to come to the total.

Q. Do you recall what the ratio was that you hit upon. The ratio of battery sales to battery and accessory sales, the combination, what were the sale of batteries in relation to that? A. In the one case I mentioned it was 9.5 and in the other 6.3. The average as I recall it was between 7 and 8 percent.

. . .

(6345) *By Mr. Dias:*

Q. I was just trying to figure out how you arrived at those early-year figures where you had nothing to go on other than a comparison of the sales during the years 1955 and 1956. It was strictly an estimate, isn't that correct? A. Let's talk in terms, if we may, of, say, Goodrich alone. How we deflated Goodrich. See, we deflated them separately and then added them together and we had the

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figure for 1955 and 1956 where we had that 9.5 percent of total TBA was indicated to be batteries. And we applied that 9.5 percent to the total TBA all the way back through 1948 and arrived at a figure for 1948 which then became the base.

Q. If you applied the percent difference that you arrived at for the years 1948 through 1954 you had to first estimate the annual sales so that you had a figure to apply the percentage against, isn't that correct? A. That is correct, yes, sir.

Q. So, for those years, 1948 through 1954 the annual sales was a figure that you have just estimated? There is no source material for that? A. That is correct, yes, sir. We had no source. It had to (6346) be on an estimated basis.

Q. Then, in other words, the figures for the years 1948 through 1954, the dollar figures that you worked on as an estimate, it had to be assumed that there was the same degree of consistency in the ratio of sales of batteries to tire TBA as there were during the years 1955 and 1956? A. Yes, and we were reasonably certain that those numbers, percentages were not higher and were in all probability lower percentages of total TBA in the early years but we used the higher percentages that obtained in 1955-1956.

(6347) Q. In Exhibit 84-C, your Table 3, column 4, your source material is the Bureau of Public Roads data on total passenger car miles traveled, is that correct? A. Yes, it is their estimate; they are not actual figures.

Q. That is the point I wanted to bring out. You didn't mention that these were estimated figures? A. Well, if you will notice in the footnote down there you will notice the last sentence says while these are the actual figures released by the Bureau of Public Roads, they represent to be precise the Bureau's estimates.

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Q. I understand you have a footnote, but I wanted to bring out that fact that they are estimates. Do you have any idea what those estimates are based upon? A. I have a fairly precise statement by the Bureau of Public Roads. If you would like I would be glad to—

Q. Statement by them to you? A. No, it is a publication that they put out indicating that they have used a sampling method in determining these mileages. They have checked it in the last couple of years, they have run a check on it and have found that I think the percentage of error was less than four-tenths of one percent.

Q. Now, would it necessarily follow that passenger car registration would or should be related to TBA sales? And we are talking about the replacement market now. (6348) A. That is really the underlying source of all TBA business. That is passenger cars and trucks and buses. And that, as I say, is the basic source of demand for TBA and we might have used the—included also trucks and buses there, but we would have come out with essentially the same percentage increase.

Q. Well, the fact that you have an increase in passenger car registration of 56.3 percent does not necessarily mean that your TBA sales ought to increase 56.3 percent; isn't that so? A. Yes, I agree with that.

Q. You think that— A. There is no precise—that is, there is certainly not a percentage for percentage relationship.

Q. That is right; then what is the relevancy of considering the passenger car registrations in computing TBA sales inflated or otherwise? A. It is this count of cars from which the basic demand for TBA emanates.

Q. But you take, isn't the biggest part of your TBA sales found in the tire and tube end of the business or the tire and tubes represent the larger portion of TBA sales? A. Yes, that is certainly true.

Q. All right, isn't it a fact that there are many two

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and three-car owners now that didn't exist back in '48 and aren't (6349) there statistics along that line and if there are more than one car in a family, isn't each car driven less and the ultimate mileage driven per family would be about the same? A. Completely adequate statistics are not available as far as I know, and I have made some pretty thorough investigations as to the actual numbers of two and three-car families. But I think if you will look at column 4 you will find that the mileage has moved up not quite as much as the number of registrations but almost; 52.5 percent versus 56.3.

Now, that is indicative, I think, of the fact that while a family has two cars or three cars they may not drive them exactly three times as much, or two times as much, but they drive them more, they get more miles on them than they would have gotten had they had only one car to the family.

Q. Well, over the years '48 to date, hasn't the trend been to travel more by cars anyway? A. Oh, definitely.

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(6356) Whereupon, ELIHU MADISON was recalled as a witness for the Respondent, and having been previously duly sworn, testified further as follows:

Voir dire examination by Mr. Dias:

Q. Do you have a copy of 84-A through D before you, Dr. Madison? A. Yes.

Q. If you will, turn to 84-B and refer to the last main column on the right, "All commodities except farm and food." Now, it was from that category that you computed the increase in accessory sales; is that correct? A. It was from the last column. I used that in expressing other accessories in terms of constant 1948 dollars.

Q. Yes? A. Yes.

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Q. Now, what do the indices show as to commodities in this particular category that you chose? I believe you stated yesterday that there are about 500 different products in that category. A. There are upwards of 500 products in the category of other accessories.

Q. And the only items in that group that faintly relate to automotive accessories were those battery cables, battery (6357) wires, and I think there are two other items there in the footnote here somewhere. But at any rate, there are only four of the rather minor items in the accessory field in those categories; isn't that correct? A. No. I believe we are talking about two different things.

All commodities except farm products and foods consist of probably upwards of a thousand items—I don't know how many are in there; I haven't counted them. I do know that the wholesale price index of all commodities contains about somewhere on the order of 2,000 commodities. I did not count the specific number of items in—

Q. No, that isn't necessary.

The point I am trying to make is that out of all those items the only ones that related to automotive accessories, as we are discussing them here, were these battery cables, battery wires, ignition wires, and there is a fourth one that you have in a footnote. Isn't that correct? A. I went through that list and I was able to find only a few items that related directly to the major TBA items, and those were the ones I mentioned.

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(6358) Q. Well, if it is in the footnote, it is on the exhibit. We will find it by and by. The fact is that in that category you found nothing dealing with spark plugs, as I recall your testimony? A. No series on spark plugs.

Q. Nor filters? A. No.

Q. Nor windshield wipers? A. No, I did not find one on windshield wipers.

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Q. But on the other hand, there were such unrelated items as drugs, fertilizer materials, alcoholic beverages, toys, sporting goods, and so on; isn't that correct? A. Yes, among those commodities.

Q. Among those items mentioned in this category that you have used to determine the percent increase for automotive accessories? A. Right.

Q. Now, I think you testified or Mr. Lorenzen may have that you might have used a 30 percent increase, but in fairness you hit on a 13 percent increase in setting up your tables here, is that correct, for accessories? Thirteen percent increase from the year 1948 to 1955. A. Some of these items that we found and just took an (6359) arithmetic average of their increases would have indicated the higher number.

Q. And included in the average were these totally unrelated items that I have mentioned; isn't that the case? Sporting goods, fertilizer products, building materials, and so on?

Mr. Lorenzen: No. Now, wait a minute. You are confusing him as to what average you are talking about.

Mr. Dias: We are still talking about the table on 84-B.

Mr. Lorenzen: Yes, but your first question, Mr. Dias, related to this average that he computed on the basis of related items which he didn't take because he thought it was too high.

By Mr. Dias:

Q. Well then, I wish the witness would clear that up. A. I didn't take it because those few items did not seem to be representative of all TBA and it would have been substantially higher.

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Q. So that when you computed this 13 percent, you took it on the basis of these four items that you mentioned yesterday, is that correct? The four more or less related—

A. No. The 13 percent is related to the "All commodities except farm products and foods."

Q. All commodities in that particular category which includes these thousand or two thousand items; is that correct? (6360) A. It is the index on all commodities except farm products and foods issued by the Bureau of Labor Statistics.

Q. Yes. Now this 13 percent, is that an average of all those items in that category? A. It is that particular series which is published in the next-to-the-last column. That is a series exactly as published by the Bureau of Labor Statistics. And then I merely converted it to a 1948 base to arrive at the last column.

Q. Yes, I understand that. But what I am still puzzled about is how you arrived at that figure shown for 1955 as 13.2. Do you see that figure? A. Yes.

Q. Now, that indicates to me that from the year 1948 to 1955, or comparing 1955 with 1948, there is a 13.2 increase; is that what that is intended to show? A. There is a 13.2 percent increase, 1955 over 1948.

Q. Over 1948? A. Right.

Q. And that is on automotive accessory items; is that correct? A. That index was applied in order to deflate the other accessories group.

Q. Now, what other accessory group are you referring to? A. You will recall in our tables and exhibits we had the tires and tubes and then we had for 1955 this group of (6361) batteries.

Q. Yes. A. Then we estimated the batteries from 1948 through 1954 and the other accessories were then the residue after deducting the batteries and tires and tubes from the total TBA that became the other accessory group.

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Q. Yes, I understand that. I know what the accessory group is, but my question is how do you arrive at the thirteen percent? A. By dividing the 117 by 103.4, which is the base year of 1948.

Q. And that 103.4 appears in the next-to-last column on the right on 84-B; is that correct? A. That is correct.

Q. And the 117 is the last item in that same column? A. Right. That is just the arithmetic conversion as we call it statistically, to a 1948 base of a series that is presently on a 1947-49 base.

Q. But again that is an estimate, isn't it? There were no indices for those items; that is strictly an estimate?

A. You mean as determined by the Bureau of Labor Statistics, that their figures are?

Q. No, I say your arriving at that 113 figure is estimated on some unknown factor here because the Labor Statistics, as I understand it, do not have a statistical (6362) study of those other accessories other than those four items we have mentioned? A. No, they do not have a series on other accessories and we used this series of theirs converted to a 1948 base as the deflator for the other accessories. Since there is a large number of items in the TBA series and they are of very diverse characteristics, it seemed that this was the most appropriate deflator that was available, and it is eminently satisfactory for this particular purpose.

Q. Satisfactory to whom? A. Well, to us, certainly. And I think most any economist would accept that as a satisfactory deflator.

Q. Have you made this type of table before for the Texas Company, this type of study? A. We very frequently do make studies that involve use of constant dollar series. For example, in a productivity study versus wages we find it is necessary to deflate wages in order to make it comparable with productivity series.

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Q. How about regular sales—I mean, everyday sales, do you make this type of chart for everyday sales, too?

A. No, we do not make this—I do not make a daily chart.

Q. Perhaps my question was misleading. I don't mean a daily chart, I mean do you annually make up this type of a chart for a dissemination among your employees or among your officers? (6363) A. Well, we have occasions—I might say in economic analyses we use many dollar series and we find that it is necessary to express them in terms of constant dollars. As a matter of fact, the Department of Commerce, in issuing its Gross National Product series and its Disposable Personal Income series, they have recognized this need for expression in terms of constant dollars and they currently, for instance Disposable Personal Income, they express it in terms of current dollars all the way back. They make a conversion themselves. They do that on the national figures on Gross National Product because they recognize that you can not compare 1958 figures with, we will say, 1948 dollars unadjusted.

Q. Annually do you study all sales of the company? Do you make an annual study of the sales of the Texas Company? A. No.

Q. In promoting the sale of their various products, are you aware of the salesmanship involved in such things as exhorting salesmen to increase your sales and so on? Have you seen that type of material? A. I am not in the sales department. That would come mostly under the area of market research.

(6364) Q. Have you ever prepared a chart similar to this for dissemination among those salesmen to point out that although the gross sales have gone up you are not coming close to your '48 sales and so on? A. In discussing gasoline volume and forecasting demand we express that in terms of physical units—

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Q. Yes. A. (Continuing) —rather than dollars.

Q. But your company also promotes the sale of TBA products and on occasion they send letters to the field telling various divisions what their sales were during a year, what they were last year, and showing an increase in sale or decrease and urging them to improve if they have lost business.

Now, it is my recollection that all those are based on current dollar figures. A. I haven't seen one of those letters.

Q. Do you recall making up a chart similar to this to point out to any specific division or group that their figures, although their gross sales were high, that they are nowhere close to meeting quota because when you deflate the dollar you boys in the field don't look so good? Have you ever found anything like that or done anything like that for the company? A. On TBA?

(6365) Q. Yes. A. Not—

Q. And isn't there a reason for that? Isn't there a reason for not doing that? Aren't we operating on a current annual basis at all times? Isn't your company? A. Well, when we as I say make our forecasts of petroleum products we are talking physical units.

Q. Yes, but I am talking about TBA now, that is also a product that Texaco promotes, and I would assume that they make studies of their progress in the sales of these commodities that they are promoting, but you have not made any studies similar to this for that product or those products, have you? A. No, I have not.

Q. I asked you yesterday, Dr. Madison, whether or not you were familiar with the annual reports of the Texaco Company? A. Yes, I am generally familiar with them.

Q. And do you prepare those? A. No.

Q. Or do you assist in the preparation of those documents? A. I render some assistance.

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Q. You are familiar with the general makeup of them, are you? A. Yes, I am generally familiar.

(6366) Q. And you recall that progress chart that is usually in the annual report? Maybe I can refresh your recollection. A. I don't know a specific one to which you refer.

Q. I am talking about the type of chart that you normally find in these annual reports.

For example, I show you a picture of a chart showing gross income and its disposition, there is one form, and here is another one (showing documents to the witness). A. That is 1952.

Q. Yes. But the only thing I wanted to point out to you is the type of graph chart that is used and the showing of the increase dollarwise over the years. A. I believe if you will look in each one of those annual reports you will also find charts on physical units.

Q. Well, no, this deals—I will agree this deals with petroleum products, it deals with all sales if I recall the makeup of this? A. Yes, that is expressed in terms of dollars.

Q. Yes. A. Yes.

Q. And this is another type chart that is expressed in terms of dollars, is it not, earnings and cash dividends per share, in dollars? (Showing document to the witness.) A. Yes, that is expressed in dollars.

Q. So that you would say it is a fair statement that in (6367) publishing your annual report showing the progress of the company the comparison is always made on current volume and shown over the preceding year, isn't that so? Comparing this year's sales to last year's sales? A. We use both the quantitative charts in physical units as well as in dollars, because our annual report, our accounting is in dollars and we report it for stockholder purposes in that manner.

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Q. And quantitative charts would be for these units of gallons of gasoline or quarts of oil or however you use those figures, isn't that the case? A. Well, I believe you will find that we have charts in there usually on crude production, domestic and foreign, in barrels.

Q. I don't doubt that you have other type charts, but the point that I am making is that in showing sales to your stockholders, in your published reports, you base your figures and your rise or fall on the current dollar volume of the Texaco Company? A. Yes, our financial statements are in current dollars. May I add—

Q. No, I think you have added enough.

Mr. Dias: Your Honor, I would like to object to the admission of 84A through D and it would necessarily follow 85-A through G, on the grounds that in computing (6368) the percent increase for batteries, just pure estimates were used, there are no basic figures for it and the same is true for the column dealing with all commodities or that is the column related to accessories; I refer to Respondent's Exhibit 84-B, the last two columns.

Further, it has been fairly well established, I believe, that this is not a normal procedure of the Texas Company. They operate as does everybody else on a current year basis in computing their sales and comparing them against prior year sales. Their payments for TBA sales or their commissions on the TBA sales are certainly in current dollar figures and I think the entire document, both documents, are argumentative and immaterial and irrelevant.

Mr. Lorenzen: Your Honor, before I answer that may I just ask Dr. Madison a couple of other questions because there has been some confusion here which doesn't reflect the facts at all and I just would like to get that clear on this estimate business.

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Further direct examination by Mr. Lorenzen:

(6374) Let me ask you, are you involved in making studies for the company for example, as to their cash requirements, and if so tell me whether you apply this constant dollar technique there? A. Yes, we recently made quite an extensive study of cash requirements, and, of course, that involved investment figures and we had to make our estimates based upon historical data which we had to convert to constant dollars in order to get comparability.

Q. And did you find that the government itself had recognized the need for this type of study by publishing figures on a constant dollar basis? A. Yes, they do that regularly as I had previously pointed out the gross that the products is expressed in terms of constant dollars, so the disposable personal income, they issue both series.

Q. Are you called in by the management of the company in connection with making estimates as to gasoline sales? A. We do not estimate gasoline sales, we estimate the market demand. A company of our size covering the territory that we do, the entire 48 states, is vitally interested in what the demand for products is going to be in the future.

Q. In making calculations along that line do you use current (6375) dollars or do you use constant dollars? A. Well, we make our estimates in volumes but we use series such as I mentioned, the gross national product and the disposable personal income. We find that there is a relationship between the demand for gasoline, for example, and the movements in disposable personal income.

Q. Is that disposable income in current dollars or in terms of constant dollars? A. We must use it in terms

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of constant dollars. We cannot use it in terms of current dollars.

Q. That is, if there is a general inflation of 5 percent in the personal national income goes up 5 percent, that isn't going to help you any in making your forecast? A. It does not help our gasoline business.

Q. So that you have to translate that into terms of constant dollars? A. Yes.

Q. And you do do that and the management has called on you to make computations which call that technique into play? A. Definitely, and we do it regularly.

Q. And the government, again, has published those figures both of national gross product and national disposable personal income in terms of constant dollars? A. Yes, that is right.

(6376) Q. Thereby applying the very technique to dollars which you have applied here in making this computation? A. The same technique, yes.

Q. Are there any other examples you can think of where you use this constant dollar technique? A. Yes. For example, we were called upon to assist—that is, to furnish data in connection with the renegotiation of a tank car rental contract. We find that the rentals are related to the costs of operating and maintaining tank cars, so in order to put ourselves in a position to negotiate that contract or put our other departments into position to negotiate it, they must know how much the cost of maintaining and operating tank cars has increased over the period since they last negotiated a contract.

So, we determine the changes in cost of material and changes in cost of the labor, and make the adjustments for inflation and express it in current constant dollars so that they can determine whether or not the rental charge or proposed rental charge is in line with the real cost increases.

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Q. Would you say that you use this constant current dollar technique almost continually in the business which you do for the Texas Company? A. In our economic analysis we are forced to use constant dollar comparisons almost daily.

* * *

(6377) Hearing Examiner Kolb: When you get hold of a document which I don't know anything about I think it would be advisable for me to ask a few questions before we go into it. Ordinarily I don't like to inject myself into a hearing, but I have here a document which I would like some elucidation on if it can be made.

* * *

(6380) Hearing Examiner Kolb: Why was it necessary to use the constant dollar instead of the current dollar in arriving at your results in this exhibit?

The Witness: Exhibit 84-C?

Hearing Examiner Kolb: Yes.

The Witness: Because we are dealing in the other cases with physical units so in order to get a series comparable with physical units we had to put them on a constant dollar basis.

Hearing Examiner Kolb: Well, your commission plan (6381) provides for payment on the basis of the current dollar figure of sales and not on units, does it not?

The Witness: That is my understanding; it does, yes, sir.

Hearing Examiner Kolb: That is the reason it is hard for me to understand why you shifted into

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units on this particular document when everything else is based upon the current dollar figure, your commisison, taxes, labor, everything else.

. . .

The Witness: We were endeavoring to show here the real increase in TBA sales. If, as in the illustration I mentioned yesterday, if tires—that would be the illustration with batteries, if batteries were selling at \$15 and total sales of \$75 in 1948, if your battery sales increased to \$125 in 1955 but your price per battery had gone up to (6382) \$25, if we used the current sales showing an increase from \$75 to \$125 it would be misleading when comparing with physical units because when we adjust that we find that we have sold five batteries in either year and we are endeavoring to compare that with other physical units here.

Hearing Examiner Kolb: Doesn't that pre-suppose that your battery will remain the same during that period?

The Witness: Qualitywise.

Hearing Examiner Kolb: In other words, if I believed the advertising which I see we have tires which are different from what we used to have, we have the tubeless tire, we have claims that the tires have longer mileage than they used to have. We have batteries which are dry cell which are supposed to last longer than the other batteries. That is not taken into consideration in this at all, is it?

The Witness: The index does not take into consideration quality. That is true in the case of automotive gasoline, there have been tremendous improvements in the quality of gasoline, and likewise in the quality of passenger cars.

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The indexes are covering the physical units and as far as I know no one has been able to devise an index, a quantitative index that would take into consideration quality changes.

Hearing Examiner Kolb: Don't you think that is (6383) important when you are attempting to put in a factual document such as this?

The Witness: We have that quality improvement and quality changes in both of these series, both in automotive gasoline and in the—there are changes in the TBA. But it seemed essential to get a real or an estimated real increase in TBA to compare with these other physical series.

Hearing Examiner Kolb: Well, isn't your real figure for comparison your actual current dollars rather than your constant dollar where you have all these different matters which cannot be ascertained and which have a bearing upon the matter to a great extent?

The Witness: A comparison here had we used current dollars and put gasoline in current dollars, I don't believe it would have been of any significance at all, but when we get it to a real unit basis I believe we have a significant comparison. Gasoline price, for example, is I don't know offhand just what it is for these particular years, but it is lower than it was thirty years ago, but the quality is materially higher.

Hearing Examiner Kolb: Your quality has materially increased, the life of your tire has increased, has it not, if we accept the tire company's statements?

The Witness: The advertisements would certainly indicate that.

Elihu Madison, Recalled, for Respondents—Direct

(6384) Hearing Examiner Kolb: Now, then, translating this information into Exhibit 85. Of course you have on 85-A, increase due to inflation, 39.9 percent. Real increase of 16.6 percent. In doing that aren't you disregarding the perhaps higher price that is being charged for the better quality merchandise that is being sold?

The Witness: There are some quality factors undoubtedly that cannot be taken care of in the index.

. . .

(6400) Hearing Examiner Kolb: I think that the next question would be directed to Mr. Lorenzen. I want to know what you expect me to find in connection with this exhibit, the purpose of it and what I am supposed to find if it goes in?

Mr. Lorenzen: Well, your Honor, the purpose of this document is this, the government in its case has put in some large numbers, total sales of TBA. Now, if we knew exactly what the issues were we might know what those numbers are in there for, but we don't know and we suppose that some argument may be made at some time in the future that those figures, dollar figures, represent an increased participation or percentage in the market to the extent of the dollars shown therein. And we think that if such a contention is to be made and your Honor is going to be called upon to resolve an issue based on that contention, you are not interested in what inflation has done here, what your Honor wants to know is under the sales commission plan how many more tires and tubes, how many more batteries, how many more spark plugs, how many more

Colloquy

fanbelts are you selling under the commission plan now in 1955, some seven years later after 1948?

Now, unfortunately there isn't any nose count. I mean it just physically isn't available, and in order to let your Honor see whether all that has happened here is (6401) that the price has gone up or whether what has happened here is that this market has been taken over to any extent by these companies, it is certainly essential for your Honor to know how much of the increase in dollar figures which the government has assigned here results from inflation which you would expect in any event, and how much does it represent an actual increase in goods, in commodities sold under this sales commission plan.

Now, we don't say, and we are not contending that your Honor is to find that exactly the increase has been 16.6 percent, but we are asking your Honor to compare these figures as against figures where a nose count has fortunately been possible, and those are comparable figures, gasoline gallonage, that is not subject to inflation; we know that the gasoline gallonage in these particular stations is up 37 percent. We know that the potential demand for TBA is up somewhere in the neighborhood of 50 percent; we have 56 percent more automobile registrations, 52 percent more miles which an automobile goes.

And while your Honor is perfectly correct that within limits perhaps the products are some better and perhaps they may not be any direct and exact relationship between those numbers, still I think your Honor can almost take judicial notice that a tire that you buy now, driving at the high speeds which they are on these highways, doesn't (6402) last you a good deal longer than what you had in 1948 in spite of all the advertising in the world, at

Theodore N. Beckman, for Respondent—Direct

least that has been my experience and I have had to pay for them.

* So that while we don't say that we want any exact finding this computation does show in general terms that comparing these TBA sales there has been nothing extraordinary, nothing out of line here; certainly there has been an increase. The Texas Company wouldn't be worth its commissions if it couldn't accomplish something in the way of sales, but the increase in terms of demand, in terms of the market has not been anywhere near the conclusion which the government would like your Honor to draw simply from the bare and naked figures themselves.

(6427) Hearing Examiner Kolb: The hearing will be in order.

Mr. Royall: Dr. Beckman.

Whereupon, THEODORE N. BECKMAN was called as a witness for the Respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. Royall:

Q. Will you state your name? A. My name is Theodore N. Beckman.

Q. Dr. Beckman, what is your occupation? A. I am a professor of business organization at the Ohio State University, and a consulting economist.

(6428) Q. What are some of the principal professional organizations that you belong to? A. I am a member of the American Economic Association, of the American Sta-

Theodore N. Beckman, for Respondent—Direct

tistical Association where I was also vice president in 1940; of the American Marketing Association where I was vice president in 1939; and a director of the Board for a number of years, including the present time, as well as several others.

Q. Have you written or joined others in writing any text books in the marketing field? A. Yes, sir, I have.

Q. Will you give the name of one or two of those? A. One of them is entitled "Wholesaling." It is published by the Ronald Press Company, New York, first in 1926, and a third edition, the latest one, is now in press. It is used in all colleges and universities that give a course in wholesaling.

Another book is "Principles of Marketing," published also by the Ronald Press Company. It has gone through six editions between 1927 and 1957. It is also used in more than 130 colleges and universities as a text book at the present time.

Q. Have any of your books been used by the United States (6429) Armed Forces Institute? A. The "Wholesaling" book has been used for a number of years by the United States Armed Forces Institute.

Q. Have you written also other books that you might mention? Have you written one on credits and collections? A. Yes, sir. I have written ten other books besides the two mentioned, including the one on "Credits and Collections" published by the McGraw-Hill Book Company, "The Chain Store Problem" and others, not counting revisions.

Q. In addition to the books which you have written, have you issued any monographs or written any articles in your field? A. To the best of my estimate, I have written between fifteen and twenty monographs, special studies, over two hundred articles, and have contributed to encyclopedias on the subject of wholesaling, prices, and credit.

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Q. Have any of your monographs been written for the government? A. Yes, sir. I have written a number of monographs for the United States government, including the Bureau of the Census, published by the U. S. Government Printing Office.

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(6430) Q. Have you had an experience as a consulting economist for the United States government or state governments? A. Yes, sir.

Q. Will you give us an illustration or two? A. I was in charge of the first census of wholesale distribution for the U. S. Bureau of the Census. I was in charge of the second census of wholesale trade, and helped to prepare for the third.

I was chief consultant of the Office of Civilian Supply, the War Production Board. And a consultant and expert witness for the attorney general of the State of Florida.

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(6431) In how many proceedings have you testified for the government? A. In five proceedings for the federal and state (6432) governments.

Q. Have you testified before the FTC? A. Yes, sir, I have.

Q. Have you done any other work with the FTC? A. I have worked with some of the branches or divisions and officials, staff members of the FTC on the development of trade practice rules for two industries at different times—the wholesale optical industry and the wholesale plumbing and heating industry.

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(6434) Were you asked, in connection with the testimony you are going to give in this case, to prepare a study? A. I was.

Theodore N. Beckman, for Respondent—Direct

Q. And what was that study to show? A. In this study I was attempting to determine the TBA sales in dollars per thousand gallons of gasoline sold by gasoline service stations, and I determined what I consider an irreducible minimum of such a figure.

Q. You did make such a study? A. Yes, sir, I did.

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(6435) Q. In making your determination did you use governmental sources for your computations? A. I used all relevant governmental sources that were available to me, or anywhere, as a matter of fact. All sources that are relevant are available, and I used them.

Q. To what extent did you use other sources? A. Wherever governmental data were not available I had to resort to other sources, but I used the most authoritative sources of private character that are recognized by the trade and elsewhere.

Q. What general approach did you make to obtaining the information necessary for the conclusions which you finally reached? A. The approach was to develop the figures in question by using all available census material either as given or for purposes of bench marks, and any other material that was deemed authoritative, and I employed in every case what I consider well-accepted statistical techniques to compute the figures for 1954, 1955, and 1956.

Q. And that is the approach you had in this particular matter is it? A. Yes, sir.

(6436) Is that the course and the method by which you arrived at the TBA figures for 1954, 1955, and 1956 in relation to a thousand gallons of gasoline at gasoline service stations; is that the one you followed? A. It is.

Q. That is confined to the United States? A. Yes, sir.

Theodore N. Beckman, for Respondent—Direct

Q. Will you state whether in your opinion as an expert the results which you arrived at for the purpose which you stated are in your opinion sound and trustworthy? A. I definitely would say so. In fact the figures I arrived at I consider most conservative calculations. I feel if it were possible to conduct a complete station by station nose count of TBA sales at the 181,747 gasoline service stations included in the 1954 census, I am certain that a substantially higher figure for TBA sales per thousand gallons of gasoline would result.

I believe that these figures are very conservative, upon which it would be safe to act. I believe the methods are such as to lead to conservative figures on which management and business could base decisions. And I also feel that the results are such that government could rely upon.

Q. Do you base that opinion upon your knowledge of the field you cover and upon the experience which you have had (6437) in other consultations and other investigations? A. Yes, sir, upon the whole range of study, research, and experience, in addition to the work on this particular situation.

Mr. Royall: Your Honor, I would like to have identified this document, a copy of which has been furnished counsel for complainant, tables numbered 1 to 9, and supplementary or alternative tables numbered 2-A, 3-A, 4-A, 5-A, and 9-A.

Hearing Examiner Kolb: That will be Respondent's Exhibit 86-A through N.

(The document referred to was marked Respondent's Exhibit 86-A through 86-N for identification.)

Theodore N. Beckman, for Respondent—Direct

By Mr. Royall:

Q. Dr. Beckman, will you at the outset tell us what these tables represent? A. The nine tables and five subsidiary or alternative tables represent the data that were used in the computations, their sources, the computations themselves, and the explanation of those computations which I utilized in arriving at the conservative figures of TBA sales per thousand gallons of gasoline for the years 1954, 1955, and 1956 as shown finally in the last column of table 9.

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(6459) Q. Dr. Beckman, we now come to Table 6. Will you please explain that table? A. Table 6 is basic in developing the total TBA sales per thousand gallons of gasoline for it is the purpose of this table to present a computation of all TBA sales by gasoline service stations which are shown for each of the three years in Column 5, or the last column of this table.

In order to develop that figure we had to start with total wholesale value of domestic replacement passenger car new tires and tubes, the figure shown in Column 1, and they are exactly the same as shown in Column 7 of Table 5.

They are merely transferred from that Table 5, after it has served its purpose, and they are the starting point for the computation in Table 6.

In Column 1 we have the dollar value of domestic replacement passenger car new tires and tubes. In order to make my computations I wanted to establish a relationship of the sales of tires and tubes by gasoline service stations to these figures shown in Column 1.

To develop that relationship I had to go back to the census for 1948 in which we had complete information on this, and there it is reported that sales of tires and tubes

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amounted to \$275,820,512. This figure had to be reduced to a (6460) cost basis because the figures in Column 1 of Table 6 are on a cost basis to stations or dealers.

They had to be reduced to a cost basis by taking a gross margin on tires and tubes of 26 percent so that the cost would be 74 percent of the selling price and thereby give a figure for sales by gasoline service stations in 1948 of tires and tubes amounting to \$204,107,179.

That figure is expressed as a percentage of the sales for 1948 comparable to those shown in Column 1 of Table 6 for the years 1954, 1955, and 1956. A ratio is arrived at which is 42.83 percent.

This means that the relationship of tires and tubes sales by gasoline service stations at cost in 1948 to total sales of passenger car new tires and tubes was 42.83 percent.

I then assumed that that same ratio would apply to the years 1954, 1955, and 1956, which is not to my liking because this assumes that the gasoline service stations did not improve their competitive position in the sale of tires and tubes since 1948, which everybody in the industry knows that that is not so.

I simply assumed that for the sake of this calculation, which makes it ultra-conservative.

Then, in applying that ratio shown in Column 2 to the data in Column 1, we arrived at what the sales in tires and tubes would be for gasoline service stations in 1954, 1955, (6461) and 1956.

In order to determine total TBA sales I developed a relationship between tires and tubes sales and total TBA sales as given by the 1948 census. And that ratio was, on a cost basis, 46.69 percent. And in arriving at that ratio I took into account the fact that there is a different gross margin on batteries and accessories than on tires and tubes, the gross margin being higher on the items on batteries and

Theodore N. Beckman, for Respondent—Direct

still higher on accessories. That has been taken into account in making the calculation.

And in that manner we arrived at the figure in the last column of Table 6 showing total TBA sales by gasoline service stations.

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(6462) Q. In other words, if you had given effect to the improved competitive position of service stations, which you say is generally understood to be true, if you had given effect to that would your ultimate figure of TBA per thousand gallons have been higher? A. Much higher.

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Q. Dr. Beckman, will you now discuss Table 7? A. Inasmuch as not all service stations handle TBA it is necessary to know how many do so. And that is the purpose of the data in Table 7.

Here, again, we start with the 1948 census, which had a breakdown of sales by commodity lines. In that census it was found that 62.7 percent of all gasoline service stations covered by that census handled tires and tubes, and 70.1 percent of them handled batteries and accessories.

We do have data on the number of new stations authorized. They are shown in Column 2 of Table 7.

(6463) We also have data on the total number of service stations which we had in 1954, 1955, and 1956, and they are shown in Column 1.

From those data it was possible to determine how many stations were discontinued during the year. Then I made two assumptions, or presumptions. One of them was that the stations discontinued were of the average type, the average mix, and therefore 62.7 percent of them were handling tires and tubes, and 70.1 percent of them were handling batteries and accessories.

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The reason for doing that, it seemed to me that any other premise would seem unsound because we know that many stations are discontinued for various reasons, like sickness, death of operator or owner, encroachment of turn-pikes, changes in real estate patterns where you have to abandon a corner, and many other reasons. So the soundest presumption was that they were of the average mix.

The second assumption or presumption that I made was that practically all of the new stations—in this case I used 97 percent to allow a little leeway—that 97 percent of all the new stations would be handling TBA.

Then I made the computation to determine how many stations in 1954, 1955, and 1956 would be handling tires and tubes, and how many of them would be handling batteries and accessories. And those data are shown in Columns 4 and 6, (6464) respectively.

Mr. Royall: Are there any questions on Table 7?

Mr. Dias: Just one question.

On that 97 percent of the newly constructed stations, that would be handling TBA products, were all those newly-authorized stations built by oil companies, or would that include all?

The Witness: No. All of them. They are taken, as you see, from the source from the Petroleum Facts and Figures for two years, and for one year from the National Petroleum News Fact Book, and they are the kinds of data that you will find in all publications which give this kind of information.

This is for all new stations. And I assumed that there may be a few stations that would be in high traffic areas, confining themselves almost altogether to gasoline and petroleum products, although that number would be very, very small. If all of them were handling TBA it wouldn't affect our result be-

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cause the difference between 97 percent and a hundred of 9,000 stations is not significant.

And if the ratio were less than 97 it would show a higher TBA because we would have fewer stations by which to divide the total TBA business.

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(6465) Q. Do Tables 8 and 9 require any explanation?

A. A very brief one, because all of the data in Table 8 and in Table 9 are derived as indicated in the footnotes the sources from data already computed. So there is nothing new in either Table 8 or in Table 9, unless it is desired for me to explain the thing. I believe that they are self-explanatory.

And they result in the final figures in Table 9 in Column 5 of \$36.26 for 1954, TBA sales per thousand gallons of gasoline; \$38.10 for 1955; and \$38.37 for 1956.

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(6473) Hearing Examiner Kolb: The hearing will come to order.

Whereupon, THEODORE N. BECKMAN was called as a witness on behalf of the Respondent and, having been previously duly sworn was further examined and testified as follows:

Direct examination (resumed) by Mr. Royall:

Q. Dr. Beckman, you testified yesterday about some difference in scope between the census figures of 1948 and 1954. Will you explain this and its effect, if any, upon your computations? A. The change in the scope was with regard to all retail trade. It was not made specifically for gasoline service stations or any other kind of retail business.

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And as I quoted yesterday, it said that "the 1954 Business Census," and that relates to retail trade, all retail trade, "excludes those establishments with no paid employment in 1954 which had a sales volume of less than \$2,500 in that year."

In examining the data I find that with regard to gasoline service stations that \$2,500 figure limitation is of no relevance or application for this reason: As a result (6474) of the change in scope, the number of stations was reduced by 8,593, and the total volume of business was reduced by \$286,894,000, which averages per station that was left out because of the change in scope, \$33,387, as against an average sale, 1948, for all stations covered by the census, of \$35,896, which means that the thing that affected the stations that were left out was the "no paid employment" rather than the size, because in size the stations that were left out were pretty nearly pretty close to that of the average.

Q. Would that change in any way affect the accuracies of your computation? A. Not at all.

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(6476) Hearing Examiner Kolb: Where do you get those figures?

The Witness: I get them by taking the census figures, including all stations for 19—may I use the blackboard, your Honor?

Hearing Examiner Kolb: Yes.

The Witness: If you take all stations included (6477) in 1948—188,640, which are given here in this Volume 2, United States Census of Business, 1948, Retail Trade, General Statistics, page 21, .02— if you take the 188,640 stations, the total volume of business done by those stations was \$6,757,047,000.

Theodore N. Beckman, Recalled, for Respondents—Cross

When the census changed the scope for 1954, they adjusted these by applying the same scope to the 1948 data for which they had all the records, and they ran those records through the IBM equipment. And so they came out on a basis that is comparable with 1954—they wanted comparability—they had then—they cut it down by 8,193, I can compute the number—and the volume of business done was \$6,470,153,000. Which means that 8,593 stations that were taken out of the 188,640 in order to get data comparable with 1954, resulted in a reduction of \$286,894,000.

If you divide 286 million by the 8,593 stations you will find that the average is 33,387—it is a pencil mark and I can't make out the figure—dollars per station of those that are eliminated.

If you divide \$6,757,047,000 by the total they had to start with, 188,640, according to the 1948 census, then the average per station was \$35,896.

So, what I am saying is that the stations that were eliminated were eliminated not because of their small size—their size was nearly the average—but because (6478) they had no paid employment. They were operated by the owner or his family.

(6481) *Cross examination by Mr. Dias:*

Q. Have you made any studies to find out how many Texaco stations fell within that 8,593 range? A. I have not made a specific study, but I do know—

Q. Stop right there. If you have not made a specific study, you do not know from a specific study. A. I do know enough that all C stations would be included in that, and some of the D stations. If over fifty percent of their business—and that is true of all C stations—is of gasoline

Theodore N. Beckman, Recalled, for Respondents—Cross

and other automotive petroleum products, they would be included of necessity.

Q. They would be included in the 8,593? A. They would be included in the figures which we are using for 1954, 1955, and 1956. And they would also be included in the 8,593 if in 1948 they had no paid employment, just like any other station.

Q. Getting back to my question, did you make a study of that, and can you tell us how many Texaco stations fell into that category? A. In the 8,593?

Q. Yes. A. I would say from—

Q. Did you make a study? First, did you make a study?

A. Not a specific study; but I examined the data.

(6482) Q. Which data? A. And I have a basis.

Q. Which data? A. For the different stations, the volume of business they were doing, approximately.

Q. You studied the data for the different company stations; is that correct? A. For all the stations in classes, like C stations and D stations. All C stations, in my opinion, would qualify as gasoline service stations.

Mr. Royall: He asked about Texas stations?

Mr. Dias: That was the question.

By Mr. Dias:

Q. Do you know this about Texaco C stations? A. I am certain.

Q. No. I say have you studied company records concerning Texaco C or D stations? A. I know their character.

Q. I don't want to know about their character. I want to know whether or not, in making these studies, you referred to Texaco records. Did you use Texaco records?

A. Not for these particular computations.

Q. You don't know, then— A. They were—

Theodore N. Beckman, Recalled, for Respondents—Cross

Q. You don't know how many, if any, Texaco stations fell (6483) in one category or the other? A. Yes, I do.

Q. What is the basis of your knowledge? A. The basis of my knowledge is the nature of the C station category, which I am sure one hundred percent of them would be included in the census canvass. And a number, some of the D stations, if their business was over fifty percent in gasoline and other automotive petroleum products.

Q. Is that knowledge based upon your examination of Texaco records? Answer just Yes or No to that question.

A. It is based on more than that. An examination of some of the records, an examination of many of their stations that I have been observing for some time, especially the last couple of years, and especially observant of that, and every one would fall in that category.

Q. How long have you been engaged in this particular study, 86-A through N? A. This particular one has extended for a considerable period of time; probably over a year.

Q. You undertook this study a year ago? A. More or less, with an attempt to find all the information that could possibly be found on the subject that would enable me to make a scientific and objective determination. It was done among many other things.

Q. Let's return to these stations here. (6484) You say by observation and some study of company records you know this to be true. How many of the Texaco stations then fall within that 8,593 category? A. I doubt whether many stations would fall in that category, whether any substantial number would be in it.

Q. Do you know how many would fall within it? A. No, I did not make a special study of that. I did not deem it relevant.

Q. The upshot of this diagram on the blackboard is that there are some stations that aren't computed in that tabu-

Theodore N. Beckman, Recalled, for Respondents—Cross

lation that you made; is that correct? A. According to the 1954 scope,

(6517) Q. Referring to Table 3, Respondent's Exhibit 86-D, have you or has the Texas Company given you for study any information that would indicate that the ratio was similar to that shown in your Column 2? In other words, that their ratio of sales— A. No, sir. This was in an entirely independent study, based on outside sources without reference to any particular company, because I was trying to get an average for the whole United States.

Q. Referring to Column 2 again, in your study have you noted that gas prices have increased over the years? A. Yes, sir. So have other prices.

Q. And does not your source, the Ethyl Corporation publication, again at page 4? A. No, sir. Page 4 merely included—

Q. I haven't asked my question. A. Pardon me.

Q. Does not that page indicate that since 1954 the refiners' sales of premium automotive gasoline has shown a greater percentage increase over previous years than has regular grade? A. In the year 1955, did you say?

Q. Each succeeding year after 1950. These tables show that refiners' sales of premium automotive gasoline have (6518) shown a greater percentage increase over the previous year than has the regular grade? A. In some years it was slight. Like in 1951 there was an 8½ percent increase in premium grade and an 8 percent increase in non-premium. I don't consider that substantial or significant statistically.

Q. How about 1952? A. 1952, yes; that is a significant increase, 12.9 percent over the preceding year as against the 3.6 percent for the other gasoline. But I see no significance with respect to the use that I made of the data.

Theodore N. Beckman, Recalled, for Respondents - Cross

In the first place, I did not use any data except for 1954, 1955, and 1956.

Q. And in 1954, premium increased 4.5 percent over the previous year, and non-premium increased 1.9; is that correct? A. Yes, sir.

Q. And in 1955, premium increased 8 percent? A. And the other 6.8 percent, which is insignificant.

Q. And in 1956, premium increased 5.9 as against the 3.6 for non-premium? A. Yes, sir; that is correct. But I see no relevance to any of those differences.

Q. Now, if you will, refer to Table 4, and I direct your attention to Column 3. Before I get to my question, I will (6519) ask you to note that in your footnote 2 you have referred to the National Petroleum News Factbook of 1957 and 1958.

My question is in connection with Column 3, where you show average gallonage per station. If you will turn to page 182 of the National Petroleum News Factbook for 1958 and 1959 you will note that the average gasoline per station for the years 1954, 1955, and 1956 are stated to be 176,558, 188,079, and 193,448, respectively? A. Yes, sir; but that is due to the fact that while they have used the same number of stations which I have used, they have used a different figure for total gallonage of gasoline that I don't know anything about, that I do not know where they got, what it includes and how accurate the thing is.

If you assume that their total gallonage figure is correct, which I do not for a moment, because I have never been able to find any such figure and the one which I computed is a calculated figure in terms of knowns rather than estimates, then I will not accept at all the figure of average gasoline gallons per station per year. It is a grossly exaggerated figure and I do not know where they got it.

Theodore N. Beckman, Recalled, for Respondents—Cross

(6526) Q. Referring to columns 2 and 5 in Table 5, does your study show what the average price per tire and tube was that was sold by Goodrich and Firestone? A. No, sir. This is a study for the whole United States.

(6529) Q. How do Goodrich and Firestone gross margins and selling price for sales to Texaco outlets compare with the average gross margins as explained in footnote 2 in Table 6? A. I am sure that they average about the same.

(6530) Q. Did you study their records? A. I talked with enough people and economists and research men and others, not only of the respondent's but of other companies—

Q. Did you study Goodrich and Firestone records? A. No, sir, not in detail.

(6533) Q. Here is another one that you may have explained. How do you arrive at the figure 62.7? I am referring to footnote 4 on 86-K. Would you explain how you arrived at the figures of 62.7, 70.1, and 97? (6534) A. I will be glad to.

If you will go to the Census of Business 1948, Volume 2, Retail Trade, Page 21.02, and take the number of stations handling tires and express them as a percent of the total number of stations and analyzing their sales, you will get 62.7 percent.

Then do the same thing for batteries and accessories. Take the number of stations reported as handling batteries and accessories—and they also give the amount of business they did in those products—and express that number of stations as a percentage of the total, you will get 70.1 percent.

Theodore N. Beckman, Recalled, for Respondents—Cross

Q. And that 97 figure? A. The 97 figure is, you might call it, an assumption. I assumed that practically all of the service stations which had been built in recent years are of atype in size, in space, and in facilities, that would normally be handling TBA products.

If that number were smaller, it would show a much higher TBA per thousand gallons of gasoline, again because we would have fewer stations by which to divide the total sales of TBA. And it certainly couldn't be higher than a hundred percent. I simply allowed for a station here and there that may be built only for the gasoline business.

(6535) Mr. Dias: Your Honor, that concludes the cross examination. I would like to object to the document on the grounds that it is hearsay in that some of the source material relied upon is by the Bureau of the Census. And while the witness may have been familiar with and worked with the Census Department in the earlier years he himself has nothing to do with it in 1948.

He I believe stated to you yesterday that some of the documentary data that he used was used only because there was nothing better available, and I contend that the best evidence here would be a study showing the TBA sales per thousand gallons of the Texaco Company.

We have general overall figures, industry-wide figures, but what is the situation in connection with the Texaco stations, and for that matter Conoco and others, but primarily Texaco. Trying to assign an average by saying that all Texaco stations meet the average that has been attempted to be set up in this tabulation is without basis. I think therefore the tabulation is immaterial because we don't know

T. N. Beckman, Recalled, for Respondents—Redirect

what the situation is in connection with the Texaco Company stations.

There are computed in the witness's figures certain stations which were excluded in his blackboard example. Finally, apparently, on occasion the item disagrees with some of his own source material.

(6540)

THEODORE N. BECKMAN was called as witness on behalf of the respondent and, having been previously duly sworn, testified further as follows:

Hearing Examiner Kolb: I have decided to rule on this document now rather than wait until tomorrow morning. I believe that the objections to it being hearsay are not sufficient because it is based on the Census reports, and so forth. While I have serious reservations as to the probative value of the document itself, I believe that will go to the weight rather than to the admissibility.

I will receive the document in evidence as Respondent's Exhibit 86-A, -B, -C, -D, -F, -H, -I, -J, -K, -L, and -M.

(6541) *Redirect examination by Mr. Royall:*

Q. Dr. Beckman, in connection with the document which you were questioned about, and gave some testimony about before adjournment, and as to which there was some discussion as to the possible incorrectness, have you any explanation to make of that? A. Yes, sir; I have.

Your Honor, I am not infallible. No human being is. But I try to do my work in the most accurate and scientific

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manner possible. Naturally when Mr. Dias called my attention to some data on page 182 of the National Petroleum News, Mid-May, 1958-1959 Edition, which I have not seen before and to which I have naturally not given any attention, during the lunch-hour I examined those data and I found (6542) what may be the reason for the discrepancy.

It is obvious that in the dollar volume data, for example, they give the same figure which I have from the Census of Business for 1954, \$10,744,000,000. But for the years 1955 and 1956 they give the data from the U. S. Department of Commerce, Office of Business Economics, without adjusting them to the Census bench mark.

So they are using really two different sets of data.

These data for 1955 and 1956, as given in this source, are the same which I have in my Table No. 1 before the adjustment factor was applied.

Q. And if a proper adjustment had been made in 1955 and 1956 as was made in 1954, you would have been in exact accord? A. Would have been pretty much in accord.

Furthermore, for your interest, you will note that the U. S. Department of Commerce itself decided to make that adjustment beginning with March, 1957. The reason they couldn't do it earlier is because the latest figures on the Census taken for 1954 do not generally become available until two, two and a half, or three years later.

So that there is no discrepancy. It is just a mise-use of figures.

Q. By the publication? A. By the publication.

Q. And as to the change, the adjustment which was made in (6543) 1957, by the Commerce Department? A. Those figures from March, 1957, and the Department of Commerce estimates will be adjusted down by 6.544 percent, the same as I have done in my Table 1.

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Q. In other words, the system they followed, as soon as they got the 1954 census, is exactly the same that you had previously followed without knowledge of it? A. Absolutely. That is why I was misled.

Mr. Royall: All right, sir.

Recross examination by Mr. Dias:

Q. Does that reflect itself in the average gasoline per station per year? A. It would reflect itself in large measure. They may have made another little estimation which I know nothing about, but that would be the biggest factor in the situation.

Q. How would that affect the average gasoline per station? A. If it were reduced proportionately, then it should be reduced by 6.544 percent. So that when they have 176,000 gallons per station, if that were a correct figure, it should be reduced at least by 6.544 percent, simply on account of misusing the figures, the dollar values.

Q. Would you mind reducing it by that amount and see where you come out? A. There may be some other factors. That is the biggest (6.544) factor.

Q. Would you like to do it on the blackboard or on a tablet? A. I don't know what that will amount to.

Mr. Royall: Can you do it cumulatively?

Mr. Dias: I don't know.

The Witness: It would be roughly 160,000 gallons instead of 176,000. But there is no doubt some other factors are involved.

Mr. Barton: Not only that, but is that one adjustment for one year?

The Witness: That is for one year.

Mr. Barton: Then there are two adjustments here between 1954 and 1956, aren't there?

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The Witness: Each set of data would have to be adjusted by—

Mr. Barton: Six percent down?

The Witness: Six percent down.

Mr. Royall: Then a multiple adjustment would bring it close to your figure, would it not?

The Witness: I do not think that would be a multiple adjustment.

Mr. Royall: You do not?

The Witness: No, sir.

By Mr. Dias:

Q. You are saying, then, that there would be a difference (6545) between the figures shown in this 1958-1959 column for average gasoline per station and the figures that you arrived at? A. The only thing that I wanted to point out to your Honor is this: That I am certain that the dollar volume figures were wrong. They used the correct ones for 1954 but the incorrect ones without the adjustment for 1955 and 1956.

What else is involved in the other part of the table I haven't had a chance to examine. But this accounts for a substantial difference.

Q. Does it affect the average gasoline gallonage as compared with your figures? A. Oh, yes; it does.

Q. As shown on your Table 4? A. It does affect it because I do not know what other computations they have made in the total gallonage of gasoline besides the erroneous dollar values. If they made a mistake in that they may have made a mistake in some other things.

T. N. Beckman, Recalled, for Respondents—Redirect

(6546) *Redirect examination by Mr. Barton:*

Q. Dr. Beckman, I show you Respondent's Exhibit 87 for identification, and ask you what the sources of the information contained thereon are, and what it indicates. How do you read it? A. There is only one source for the basic data; namely, the number of establishments and total sales for 1948 and 1954, and that source is the United States Census of Business, Volume 3 for 1954, as shown in the footnote to that table.

(6547) The only things that I computed from those data were the sales per establishment in each of those years, and the percentage change from 1948 to 1954 as shown in the last column.

Q. What is the basis upon which the Census classifies a tire and tube wholesaler as a tire and tube wholesaler? A. A tire and tube wholesaler is one, the majority of whose total volume of business is in tires and tubes.

In other words, to be classified as a tire and tube wholesale establishment that establishment must do the majority of its business in tires and tubes.

Q. Do you mean over 50 percent? A. Over 50 percent.

Q. And in connection with the total sales figure in the second line of Respondent's Exhibit 87 for identification, what products are included in that total sales figure for both years? A. In those sales are included not only tires and tubes but all other products handled by tire and tube wholesalers.

Q. As classified by the Census? A. As classified by the Census.

Q. Doctor, what is the fact with respect to what the Census shows as to whether there are other wholesale establishments other than those classified as "tire and tube wholesalers", who handle tires, batteries, and accessories, (6548) and if so, how many does the Census indicate were

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engaged in that in 1954? A. To the best of my knowledge, following an examination of the Census data, I would say that over 15,000 establishments are included in the Census which handle automotive accessories, batteries, tires and tubes, as well as other products but the majority of whose business is not in tires and tubes necessarily.

Voir dire examination by Mr. Dias:

Q. Will you tell us again what is included in all kinds of wholesalers? A. All kinds of wholesalers? Wholesalers in all kinds of business.

(6549) Q. Automotive or otherwise? A. Yes, sir.

Q. I thought I understood you to say that that was restricted somehow or other to automotive accessories? A. No, sir. You see, in 1954 we had 165,153 establishments operated by wholesalers of various kinds. Of that number over 15,000 are known to have handled some TBA products. But we do not know the exact amount.

Q. 15,000 of that 165,000-plus? A. Of that 165-plus, yes.

Because we have grocery wholesalers, hardware wholesalers. Some hardware wholesalers handle tires and tubes and batteries and automotive accessories.

Q. Among the tire and tube wholesalers, would there be some that also handled accessories? A. Yes, sir; because in order to be included in this classification all that is needed is that over 50 percent of the business be in tires and tubes.

(6552) Mr. Barton: Isn't one of the tests going to be whether or not the testimony elicited by the Government constituted a fair sample of all of

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the wholesalers engaged in business in the country? And isn't any kind of information that can be brought to bear of an authentic and authoritative nature germane to the decision on that subject?

Hearing Examiner Kolb: If you were showing the increase in the sale of tires, for example, or the sale of batteries or the sale of accessories as such, I might see something to your contention. But you have rain coats, rubber boots, shoes and everything else.

Redirect examination by Mr. Barton:

(6553) Q. Dr. Beckman, I show you Respondent's Exhibit 88 for identification, and ask you what it is, what the source of the information is? A. It shows net sales of specified tires and rubber manufacturers, 1955 compared with 1948; the amounts are given in thousands of dollars, and the percent change has been computed for 1955 as compared with 1948.

Q. What was the basis for the selection of the companies who were reported on? A. I took all tire and rubber companies for which there was published information, and that included 13 companies. The information was available from Standard and Poors' Corporation Manuals for each year.

(6554) Q. And are there any tire and rubber companies not included here, and if so who are they and what was the basis for not including them? A. To the best of my knowledge there are two other tire and rubber manufacturing companies. One of them is Dunlop. But the bulk of their business is in foreign countries, and their data are consolidated. A very small part is done in the United States.

The other company is Gates Rubber Company, but that is a privately owned corporation for which no information is ever divulged, and is not certainly in any published form.

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Q. I show you Respondent's Exhibit 89 for identification, and ask you what it is, and what is the basis on which it was prepared? A. It is a chart prepared from the data in Respondent's Exhibit 88, for the purpose of simplifying the presentation and showing the relative position of the B. F. Goodrich Company and Firestone Company in relation to the other eleven companies for which we have the net sales for those two years.

Of course as shown quickly by this chart, there were five companies which enjoyed a much larger increase in net sales in 1955 as compared with 1948—a much bigger increase than Goodrich and Firestone—and there were three others below but not far below.

(6555) It was a means of measuring the business health of the tire and rubber manufacturers, all for which I could get information, as reflected in net sales.

Q. I show you Respondent's Exhibit 90 for identification and ask you what it is? A. Respondent's Exhibit 90 is entitled "Total assets of specified tire and rubber manufacturers, 1955 compared with 1948". Again the data are taken from the same source, Standard and Poors' Corporation; Standard Corporation Descriptions, 1956. And the percent changing for each of the companies was computed from those data by me and are shown in the last column.

Q. I show you Respondent's Exhibit 91 and ask you what it is? A. It is a graphic presentation of the results shown in the last column of the preceding exhibit, in order to see at a glance how the various companies fared in their business health as reflected by total assets. There it shows that eight companies enjoyed bigger increases—some very substantially larger increases—than did Firestone and Goodrich; two others enjoyed increases almost like Firestone and Goodrich, somewhat below; and every one of the companies enjoyed an increase of not less than 40 percent during that period, and it went up as high as 162.2 percent,

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(6556) *Voir-Dire examination by Mr. Dias:*

Q. Let's start all over again. In 1948 give me the first four in the industry, in net sales, in the order of (6557) importance. A. Goodyear Tire and Rubber Company.

Q: That was first. A. First. Firestone Tire and Rubber Company, second. United States Rubber Company was third. B. F. Goodrich Company fourth. General Tire, fifth.

Q. In the year 1955? A. In 1955, Goodyear Tire and Rubber Company was first; Firestone was second; United States Rubber Company was third; Goodrich Rubber Company was fourth; and General Tire and Rubber Company was fifth.

Q. Do you have any figures to show the years—I mean the position of the companies between the years 1948 and 1955? Did the relative positions of those companies change any during those intervening years? A. I have some data but I haven't checked them for that particular purpose. They are all available from Standard and Poor. In making my study I was not concerned with who is first and who is second, but what has happened to them during the period in order to see whether the little fellow did any better or worse; or any of the companies regardless of size. I did not deem size important from that point of view.

Q. Do you have anything to show the comparative positions of these companies in terms of total assets for the year (6558) 1948? A. Yes, sir.

In terms of total assets, 1948 Goodyear was first; United States Rubber was second; Firestone was third, but that was close, very little difference there; Goodrich was fourth; and General Tire and Rubber Company was fifth.

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Q. What about 1955? A. In 1955 Goodyear was first; Firestone second; United States Rubber third; Goodrich fourth; and General Tire fifth.

Q. How do total assets feature in this picture at all? A. Total assets, when you are trying to determine the business health of a company, there are several ways in which it can be done. Usually we use more than one measure. One of them of course is their sales; what is their sales volume. In other words how much business do they do.

Whenever Fortune magazine publishes the 500 biggest corporations in the United States each year, that is the first thing they do. They range them according to the total volume of business. So General Motors the largest would come first, and so on.

Another thing which is commonly accepted is the total assets. After all, in order to operate the business you have to have facilities, plant, equipment, and I am talking about tangible assets. We did not include anything of an intangible character in these figures. No good will or (6559) anything of that sort.

That shows the substantiality of the business. And it is considered a universally accepted index of a business strength or weakness.

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(6570) Hearing Examiner Kolb: I will sustain the objection.

Mr. Royall: Your Honor, may I say a word before you make that absolutely final. It is not much of my business, but it is a little.

As I understand one of the charges in this case, this commission plan will hurt the tire and tube wholesalers. It appears that tire and tube wholesalers, taken across the board, are growing both in sales and in number of establishments, greatly or more rapidly than have any other kind of whole-

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salers, or all of them put together, rather. It seems to me it is a very cogent argument against that contention. That is the way I feel about it.

Mr. Dias: If it is shown first that the sales had been made to the stations involved, namely the Texaco market. That is item number one.

(6571) Second, if it is also shown that their sales have increased due to the sales of tires and tubes. We don't know what their gross sales have increased from. It may be rubber shoes, it may be door hinges, it might be anything. We don't know that.

* * *

(6575) Redirect examination by Mr. Royall:

Q. Dr. Beckman, state whether or not the figures appearing on Exhibit 86-M as to the TBA sales per one thousand gallons, such figures being stated on the exhibit, whether they in your opinion as an expert represent the irreducible minimum of the average TBA sales at station cost per thousand gallons of gasoline by service stations in the United States for the years 1954, 1955, and 1956.

Mr. Dias: I object to the question. If there should be some other figures shown here I would assume that the witness would have put them in. If these are not his opinions, and if the opinions are not based on this work that he has gone through to arrive at them, then I don't understand the purpose of the exhibit.

Mr. Royall: He stated once before, your Honor, in one instance—

Hearing Examiner Kolb: Let's not argue. I will overrule the objection. Answer the question.

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A. In my opinion the figures shown in Exhibit 86-M, the last column of TBA sales per thousand gallons of gasoline, represent a irreducible minimum.

* * *

(6576) The Witness: Your Honor, I was simply going to point as an illustration to a couple of things which are in the record in my calculations. But I deem them to be unusually conservative and not reflecting what I would do if I were to make an objective study for any other purpose. And because of that the amount which we show in Exhibit 86-M, in the last column, are understanding what I think would be the correct calculations, the correct results, if we used those at least two adjustments which I made in a most conservative fashion.

* * *

(6577) Q. Do you consider the figures stated in the last column of Table 9 a maximum figure for TBA in relation to a thousand gallons? A. On the contrary, I consider them a irreducible minimum.

* * *

(6580) Q. I note in a table which you testified about this morning, and which you testified orally about, that it is stated that in 1948 the percentage of TBA to the total gasoline service station sales was 9.1 percent. If this 9.1 percent were applied, what would be the dollar figure of TBA in relation to a thousand gallons of gasoline?

Mr. Dias: Before you answer, may I know what it is you are referring to? Are you referring to this table?

Mr. Royall: Yes.

Mr. Dias: That table has been stricken.

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Hearing Examiner Kolb: The objection will be (6581) sustained.

Mr. Royall: Your Honor, may I tender the answer? If permitted to answer, he would testify \$56.64.

By Mr. Royall:

Q. Dr. Beckman, have you during the course of your studies of the TBA problem made investigations independent of your computations, and have you made inquiries of dealers, of rubber companies, of oil companies, and have you studied the market? A. Yes, I have.

Q. Has this study included C stations and their TBA facilities? A. Yes, sir.

Q. Has it particularly included Texas C stations? A. Yes, it has.

Q. State whether or not C stations with exceptionally good facilities for the TBA would reasonably have a higher dollar figure than the average.

(6582) Q. What is the answer? A. Very definitely so. The very fact that the stations have more space and more facilities for service and the sale of products, they would have a higher ratio of TBA sales to total sales.

Q. Doctor, in your investigation and from your experience and knowledge of the Texas service stations, does the Texas Company have better-equipped C stations than the average service station?

Mr. Dias: I object, your Honor. What is the "average service station"? These generalities, I don't see how anybody can make a comparison or give an answer to that question.

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Hearing Examiner Kolb: Has the Doctor (6583) investigated all these service stations to be able to answer that?

The Witness: Yes, sir, it is possible because in the average of 182,000 some service stations are included, all kinds of stations, good ones and poor ones.

Hearing Examiner Kolb: He has asked you about the ones that you know about.

The Witness: And the ones that I know are definitely above the average, because they all have facilities.

Hearing Examiner Kolb: Texas stations are above the average?

The Witness: The C station type. I am not talking about the D stations. Some of the D stations have, most of them do not. But we are concerned here with the C stations because they are the ones that are included in the Census figures with more than fifty percent in gasoline and other automotive petroleum products.

Mr. Dias: Who determines what is an average station? Is the doctor here the one who determines what an average station is? What does he consider an average station? It seems to me we need some ground work in here before we can draw some comparisons.

Hearing Examiner Kolb: I will overrule the objection. I think the Doctor has answered the question.

(6584) *By Mr. Royall:*

Q. Doctor, there has been testimony in this case which we contend shows that in Texas stations, certain divisions

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in which testimony was taken, the TBA sales range from fifty dollars to sixty dollars per thousand gallons of gasoline. Is that figure, in your opinion, at all improbable in Texas stations? A. Not at all.

(6585) Voir-Dire examination by Mr. Dias:

Q. Doctor, referring to Exhibit 88, do your figures show the products involved in the increase of net sales of these respective rubber companies? A. They show only total net sales.

Q. Total net sales. A. That's right.

Q. And referring to Respondent's Exhibit 90, are the assets shown to which this growth is attributed? A. Total net, total assets, excluding goodwill, copyrights, patents, and trade marks, are shown in that exhibit.

Q. But referring again to 88, you don't know, you couldn't state where their sales increased, which particular product they produced; is that so? A. No, that is impossible.

Q. In connection with Respondent's Exhibit 90, can you tell us what assets have increased? A. There is some fragmentary information.

Q. From this source material that you used? A. Yes, sir.

Q. What is it attributed to? A. General growth of all those companies and diversification.

Q. Diversification of what? Other lines? A. Diversification not only of that, but going into (6586) synthetic tires and tubes, development of other rubber products and allied things. But all companies have done that.

It is a comparison that I have made of any number of cases, of relative positions of companies, and it is the growth that is important, like a company like Cooper, with sales less than \$8,000,000 going up to almost \$24,000,000.

Ben Halsell, Recalled, for Respondents—Direct

That is a tremendous thing. \$24,000,000 is a lot of business for a company of that size.

Q. What is your understanding of a "C" station and a "D" station among the Texaco stations? A. A "C" station is a lessee station, owned or leased by the Texas Company to the dealer. Those are the stations in which I was primarily interested because they are the kind of stations that are included, all of them, in the Bureau of the Census figures.

Q. What, about "D" stations? A. Some may be included, depending on the proportion of sales of gasoline and other automotive petroleum products.

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(6595) Hearing Examiner Kolb: The hearing will come to order.

You may proceed.

Mr. Royall: Mr. Halsell. Your Honor, Mr. Halsell testified before in this case.

Whereupon, BEN HALSELL was called as a witness for the Respondent and, having been previously duly sworn, testified as follows:

Direct examination

The Witness: I am Ben Halsell, 135 East 42nd Street, New York City, The Texas Company.

Mr. Royall: Your Honor, just to bring it up to date, Mr. Halsell testified previously in this case he was first employed by the Texas Company in 1926, became zone manager in 1931 or 1932. Since that time he has been state manager, assistant division manager, division manager, and manager of merchandising at the home office.

Ben Halsell, Recalled, for Respondents—Direct

By Mr. Royall:

Q. Mr. Halsell, did the positions you held previous to January 1, 1958, have any relation to the retail sales of The Texas Company, and particularly to sales made by service stations handling the Texas Company products?

A. Yes, sir.

(6596) Q. What is your present position with The Texas Company? A. Presently I am the director of advertising and sales promotion.

Q. Does that date from January of this year? A. Yes, sir.

Q. Have you, over the years, been and are you now familiar with the TBA sales which are the subject of this action? A. I consider that I am, yes.

Q. What opportunity have you had to know about them? A. My long-time experience in the business, and from an observation of trade publications and various information of that kind.

Q. Have you been closely—up to January 1, 1958—in touch in your previous positions with the TBA activities? A. Yes, sir.

Q. Since January 1st do you have any responsibility as to TBA sales? A. Perhaps not a direct responsibility except insofar as the sales promotion end of the business is concerned. In that field of endeavor there is a connection with TBA sales.

Q. Even since January 1, 1958, have you kept in touch with and been familiar with the TBA situation? A. I have, yes.

Q. As a result of your duties with The Texas Company, have you familiarized yourself with the history of TBA and its (6597) continued development? A. Yes, sir, I have.

Q. And since 1931 you have been fully acquainted with those developments, have you? A. Yes.

Ben Halsell, Recalled, for Respondents—Direct

Q. There is in evidence, Mr. Halsell, Plaintiff's Exhibits 104, 3, and 13, which are TBA contracts by The Texas Company with Goodrich and with Firestone, respectively.

Prior to 1940, through what types of outlets was the gasoline of Texas Company sold? A. In the old days, I should say a considerable time prior to 1940, TBA products, gasoline and petroleum products were sold principally through general stores, by cycle shops, car dealerships, some restaurants had a pump or two out in front, the kind of merchant whose principal revenue came from some other activity than the sale of petroleum.

Q. And as automobiles increased and became more common, were so-called filling stations developed? A. At that time it became economically advisable for merchants to give their entire time to the sale of petroleum. There was a sufficient revenue from that source to permit the so-called filling station which provided the principal source of revenue to the dealer.

Q. Did these filling stations have, for example, lubricating facilities at the outset? (6598) A. They were pretty well restricted to the sale of just the bare essentials, the gasoline and the motor oil and the grease, so to speak.

Q. And during that period, did the Texas Company have a company symbol for the so-called filling stations? A. In the correspondence which related to the sale at retail of gasoline, motor oil and grease, there was a symbol "FS" which meant "filling stations."

Q. Then what were the later developments from then on as to the filling station situation? A. As time went on certain marketers realized that there was a need to provide a little bit more substantial type of building, one that would add to the office and maybe the rest room or two that existed in the beginning. At that time enclosed facilities were originated. I believe it was the Sinclair Company that did that in the beginning. There was quite an

Ben Halsell, Recalled, for Respondents—Direct

industry reaction to the thing they did in the mid-20s. They built some stations with enclosed bays and they called them "greasing palaces."

Q. Greasing palaces? A. Yes, sir.

Q. Somewhere in the '20s, later in the '20s, did you change the symbol? A. As we came into this newer concept, the "FS" symbol which referred to filling stations was changed to "SS"—service stations.

(6599) Q. Mr. Halsell, was Texas one of the first to make these developments that you speak of, that is, adding those facilities? A. No, sir. I don't think we were one of the first. We made an observation of the competitive trend and followed along with it. I wouldn't say we were one of the first.

Q. I believe you mentioned Sinclair as being one of the first, or the first? A. Yes, sir.

Q. About when was that? A. I would say, in the mid-20s, about '25 or '26.

Q. With this new development did the costs of the stations increase? A. Yes, sir; there was an increase in the costs. First, you were increasing the volume of the station, which of course added to the cost. And then there was naturally an increase in the cost of labor and materials.

Q. And did the cost of operation also increase? A. Yes, sir; the cost of the operation of the station increased accordingly.

Q. Why was this expense incurred? A. We thought it necessary to provide for Texaco dealers the same kind of an opportunity to sell companion items to petroleum products that other companies were giving their dealers.

(6600) Q. I believe you mentioned some of the facilities that were added during this period. Did they have storage facilities also? A. Yes, sir; there were facilities there for the display and for the storage of TBA materials, both in the so-called salesroom or office and also in the enclosed bays that were constructed.

Ben Halsell, Recalled, for Respondents—Direct

Q. Was there any economic reason why the dealers took these other products on? A. They found it necessary to diversify their operations much the same as other merchants in entirely different fields had done.

Mr. Dias: Your Honor, I think I will move to strike the last answer. This witness is testifying as to the thoughts of some dealers. I don't believe he is qualified to so testify.

Mr. Royall: Maybe I didn't qualify him.

By Mr. Royall:

Q. Do you know from your experience with the dealers, why they added these other products during that period?

A. I know that there was an economic necessity for Texaco dealers to diversify their sales activities so that they could compete successfully with the dealers of other suppliers.

Q. During that period, say, the later period, maybe (6601) into the '30s, was there any other development which affected—any particular development which affected the ability of the dealer to pay his expenses? Anything in connection with the number of automobiles, and so forth?

A. Well, at that time of course there was a great increase in the number of registered automotive vehicles, but there was a greater relative increase in the numbers of service stations. So that in 1939 there were only 108 registered cars per service station, whereas ten years previous to 1939 there were 43 percent more cars per service station.

Q. Did any of your competitors at that time take any steps to cope with this dealer need for diversification? A. One of the first companies to recognize that need was the Standard group of stations. There were five or six of those Standard companies which together formed the Atlas Supply Company.

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The Atlas Supply Company was formed to acquire and market and merchandise a rather full line, finally, of TBA materials to the dealers of these Standard companies. It was a sort of an evolutionary growth.

In the beginning Atlas dealt almost exclusively in tires and tubes. Later, a line of batteries was added. After that they got into the smaller accessories items, such as fan belts and filters and spark plugs and wind shield wipers, and the like.

(6602) Q. Did that occur in the early '30s or the latter '20s? A. That came in the early '30s.

Q. What effect did this new development of Standard stations through the Atlas Supply Company have upon the ultimate consumer, the motorist?

Mr. Dias: Your Honor, before we go on, it strikes me that this whole line of questioning, certainly the last three or four questions and the present one, appear to be an attempt to lay a groundwork for the defense of meeting competition. I don't know that that is relevant at all to this matter. I move that it be stricken.

Hearing Examiner Kolb: I will overrule the objection.

Mr. Royall: Will you read the question?

(Question read.)

A. It provided the motorist with a kind of service not only as it applied to the acquisition of petroleum products necessary to the operation of a motor car, but also with reference to the companion items, the tires, the batteries, the tubes, the accessories, and these smaller accessories items that I mentioned.

So that the motorist would be inclined, for that reason, to prefer to patronize the competitive dealer who could offer all those services and products.

Ben Haisell, Recalled, for Respondents—Direct

Q. Do you know when the expression "one-stop service (6603) station" originated? About when? A. I should say about 1935.

Q. After this period you referred to? A. Yes, sir. Substantially at that time.

Q. What is meant by the common term "one-stop service station"? A. "One-stop service station" is a place where a motorist can go for all of his product and service needs. He can make one stop, instead of making more than one stop, to acquire those products and services.

Q. What effect did this development by the Standard companies have on your dealers? A. Obviously—

Mr. Dias: Your Honor, I want to object. I don't see what difference it makes what effect it has on his dealers. If this is not a foundation for meeting competition I don't recognize it when I hear it. I don't see that the effect of that type of operation has anything to do with this case.

Mr. Royall: Your Honor, we are trying to show that there is a valid and demonstrated reason for this system of TBA. This is the last question along that line.

Hearing Examiner Kolb: The objection will be overruled.

The Witness: May I have the question?

(6604) (Question read.)

A. Obviously, it put our dealers in a position of disadvantage competitively. The motorist who could go to a competitive station and acquire all the products and services that were necessary to the operation of his car, as I said before, preferred that kind of a service. So that Texaco dealers in competition with that were placed at a distinct disadvantage.

Ben Halsell, Recalled, for Respondents—Direct

By Mr. Royall:

Q. Mr. Halsell, what did the Texaco Company do to meet this situation, this practical situation?

Mr. Dias: Your Honor, I object again. I think it has become obvious that it is an attempt to show a meeting of competition. I don't see the relevancy.

Mr. Royall: We don't plead it and we don't claim it.

Mr. Dias: Then why do you develop it?

Hearing Examiner Kolb: Objection overruled.

By Mr. Royall:

Q. What did you do to meet this competitive situation; what did you do to meet the Atlas situation? And when did you do it? A. We developed what is known as the "sales commission plan".

Q. Prior to the time of the sales commission plan, did you (6605) have an experimental or preliminary period?

A. Yes, sir. There was a period of several years before 1940 when we were experimenting with different ways of meeting this competition.

Q. Is that the period you went to this one-stop idea? A. It was beginning to develop at that time; yes, sir.

Q. With this development did you observe whether the one-stop service attracted customers? A. We observed that it did attract customers.

Q. What effect did it have on your dealers? A. It had the desired effect to put them in a position to render this one-stop service which had become important to the motorist, a service that the motorist desired and demanded.

Q. Was there any benefit to the Texas Company in connection with the attraction and holding of dealers? A. We found, as time went on, that we could not attract and hold

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the best and the most aggressive dealers unless we provided the kind of physical facility that would permit them to render this so-called one-stop service.

Q. And that eventuated in your making the existing TBA contracts in 1940; is that correct? A. It is.

Q. In connection with your TBA system, what facilities must your service stations have? That is, those that sell (6606) TBA? A. Our service stations must have facilities for the display, for the storage of TBA materials, and there must be facilities also for the rendering of services that are associated with the sale of those products. And those facilities take the form of enclosures of service stations. We refer to them as bays.

Q. What is the present approximate cost of a modern leased Texas service station?

Mr. Dias: I object, your Honor. I think it is irrelevant.

Hearing Examiner Kolb: I will overrule it.

A. Our figures show that the cost of a modern service station averages \$60,000.

Q. Does the dealer contribute anything to this capital investment to any appreciable extent? A. Very little.

Q. With the TBA system established and operating, does the Texas Company have any interest in the quality of the products that are sold through its stations? A. We do have an interest in the quality of TBA material sold through service stations.

Q. Is that quality important as to customers and dealers? A. Yes, sir.

We take great pains to manufacture and so distribute (6607) petroleum products that they reach the motorist in a state of high quality, and it is only natural and normal that we would want a line of TBA materials of the same kind.

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Q. Do you find in the operation of your TBA program that the motorist tends to hold you accountable for the quality of products other than Texas products sold in those stations? A. It is unfair and it is unjust but it is true that motorists, even though they are completely satisfied with Texaco gasolines or motor oils or greases or the services of certain Texaco dealers, if they find dissatisfaction with a tire or battery or another accessory, they associate that dissatisfaction with Texaco.

Q. And that applies to those which are not covered by the sales commission plan itself; does it not? A. It applies to all kinds of TBA materials.

. . .

Q. Have you received written complaints along the line I was asking you? A. On numerous occasions we have.

(6608) Q. And have you a considerable number of those letters from your files? A. Yes, sir.

Mr. Royall: Please mark these exhibits.

(The documents referred to were marked Respondent's Exhibit 93-A through 93-Z-83, for identification.)

By Mr. Royall:

Q. I hand you papers which have been marked for identification as Respondent's Exhibits 93-A, -C, and -H.

Are these letters which I hand you representative of complaints which your Company receives? A. Yes, sir.

. . .

(6610) Q. Is 93-G, Mr. Halsell, in connection with the complaint made to you by Mr. Odoms? A. Yes, sir.

Ben Halsell, Recalled, for Respondents—Direct

Q. Is that also representative of the type of complaints you received? (6611) A. Generally, yes.

• • •

Q. I hand you Exhibit 93-G, and ask you, did that cover any TBA sponsored by the Texas Company?

Hearing Examiner Kolb: Does it appear on the face of it?

Mr. Royall: Yes, sir.

The Witness: The material specified in this letter is not a sponsored product.

Mr. Royall: It says a U. S. Royal Tire.

Mr. Dias: That is the reason there was no objection because we know in some areas U. S. Royals are sponsored.

(6612) *By Mr. Royall:*

Q. U. S. tires are not sponsored by Texas in that area, are they? A. No, sir.

Mr. Royall: Your Honor, in connection with 93-H, I would like to call to the attention of the Court that it appears on the face thereof that that was a recap tire.

By Mr. Royall:

Q. Mr. Halsell, you spoke of the cost of providing and maintaining facilities for these one-stop stations which handle TBA. Does the company incur other expense in connection with the sale of TBA by the dealers?

• • •

A. There are other costs.

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By Mr. Royall:

Q. Will you give some of them in general, not completely? A. The costs of promotional pieces—in that connection, we provide from time to time postcards which dealers can (6613) use to mail directly to their customers. We provide newspaper mats, mats for the dealer's use in creating handbills and throw-aways, as they are called now. There are costs of educational campaigns having to do with the merchandising of TBA materials. There are dealer meetings; there are dealer sales and service conferences; the cost of the personnel involved in aiding the dealer organizations to do this job. There are other costs, yes.

Q. Mr. Halsel, will you tell us what are some of the factors or reasons that led the Texas Company to select the TBA sales commission arrangement rather than some other arrangement?

Mr. Dias: Your Honor, I object. I believe that is completely irrelevant why they chose any particular method. They have the method. We know that. What difference does it make what the reason for doing it is? That has no bearing on whether or not they forced, urged, or persuaded the dealers to buy specific products.

Mr. Royall: Your Honor, I think if the purpose is stated, and the reasons for having this system and maintaining it recounted, that it will serve to demonstrate first that coercion or thought of coercion never entered their minds.

Secondly, it will affirmatively tend to negate the existence of coercion. I am just trying to get him to (6614) describe a consideration which led them to have and to continue this system. And I think it is material.

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Mr. Dias: I don't want the record to be silent on this particular point. I certainly don't agree that there was ever any contention that there is coercion in this case.

Hearing Examiner Kolb: The objection will be overruled. The witness may answer.

The Witness: Let me have the question.

(Question read.)

A. There were several arrangements available. We selected the commission plan for several reasons. First, there was the national acceptance, the national distribution of the two lines that we finally decided on. There was a demand and acceptance for those brands which are so important in the sale of tires and tubes which would have taken years to create had we taken perhaps our own brand of tire. There was the—

By Mr. Royall:

Q. How about the distribution? A. There was the point of a ready-made, an already-created warehousing arrangement. These great companies, these great tire companies have already established their warehousing points, they have already established their sales distribution points, in addition to the warehouses, and those (6615) facilities were readily available to the commission plan operator and readily available to the commission plan operator and readily available to the Texaco dealers who took those lines.

Q. Did it save you the necessity of having those warehouses? A. Yes, it did. And then there was the fact that we had available the know-how and the trained organization of Firestone and Goodrich. On another plan we perhaps might have thought it necessary to establish a whole new organization which would devote its entire time and

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attention to the sale and the merchandising of TBA materials, whereas on a commission plan basis, while there are certain costs, to be sure, those costs are considerably less than at another plant decided on.

Q. Wouldn't that also apply to the matter of inventory?

A. The inventory situation that the tire companies faced is bad and getting worse. Now you have different colors of tires; you have black tires and you have white tires; you have different fabrics in tires. For a long time there was cotton, then there was rayon, and now nylon, and you read in the papers about other kinds of fabrics, and they all have different qualities and different prices.

Then there is the matter of sizes of tires. A sixteen-inch tire was the thing several years ago; then the diameter (6616) of the wheel got smaller—fifteen inches, now fourteen inches. And then, as if that problem weren't enough, here come the foreign cars on the market. Those tires go in all sizes.

So the stocking and the inventory and the capital investment necessary to carry on a tire business on one's own account would have been considerably complicated, more so than by the choice of the commission plan.

Q. Mr. Halsell, in operating the present TBA plan, has any situation arisen about rebuilding Texas stations, and if so explain it. A. Every year we appropriate sizable sums for the rebuilding of stations that have become more or less obsolete, and in the rebuilding of those stations there is always the consideration of providing facilities for the dealer's sale and servicing of TBA materials.

Q. Do you know how many new and radically rehabilitated stations have been built, say, in the period from 1952 to 1956?

. . .

Q. Do you know, Mr. Halsell, and if so, how do you know? A. Our records show that the new stations built

Ben Halsell, Recalled, for Respondents—Direct.

in the (6617) period you mentioned number 3,316. And the rehabilitated stations, those stations that have been rebuilt, 475. And those stations—that rebuilt figure—applies only to stations that we own in fee, which are vastly fewer in number than the leased stations.

When we arrange for the rehabilitation of a leased station we do it through the lessor, and that figure would not be included in the figure that I have just recited of 475.

Q. A few minutes ago, in describing the services that you had to perform under the existing TBA service, you referred to assistance to the dealers. I will ask you, does The Texas Company furnish to the dealers advertising literature usable for the promotion of TBA? A. We do.

Q. Is this advertising material limited to Firestone and Goodrich TBA? A. Some of it mentions Firestone and Goodrich TBA materials, and some of it refers generally to TBA without mention of brand.

Q. Do you have many types of this advertising and promotion material? A. A number of different types. Maybe fifteen or twenty types.

Q. Is one of those types direct mail cards? (6618) A. Yes, sir.

Q. To whom do you mail these cards? A. We hand them, we pass them to the dealers for their use in the mails.

Q. Do some of them refer to—do they refer to TBA? A. Some of the cards refer to TBA.

Q. Who makes the selection of the particular card to be mailed out to the customer? A. The dealer makes that selection.

Q. And do you offer him an alternative of various cards? A. There are a number of different types of cards and he uses the card that seems appropriate to his need.

Q. How many of these cards are sent to the dealers each year? A. I don't know how many are sent, sir, but

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in inventory we had, by recent count, 23,000,000 of them. So it is safe to say that the inventory is no more than a two-year supply. That would place millions of these cards in the hands of dealers every year.

Q. You stated that you furnish the dealers a number of other types. Do you furnish newspaper formats? A. Yes, sir. We furnish the dealers newspaper formats which they can use in promotion of their TBA materials.

Q. How about handbills? A. There are mats for the preparation of handbills, also.

(6619) Q. Do you have any publication that refers to TBA? A. There is a monthly publication called "The Texaco Dealer," and that publication is devoted to helping the dealer with his merchandising problems in all its aspects. Very frequently, I should say in about half the issues, there is some article or some story or some presentation dealing with the dealer's merchandising problem.

Q. Do you have special publications or pamphlets dealing with TBA? A. There are special pamphlets dealing with TBA.

Q. Do you know whether or not there is any publication which shows the description and types of the popular TBA items of all kinds? A. Having to do with displays?

Q. No, showing a description and size and so forth. A. Yes, there is. There is what we call a lubrication guide. That guide gives the dealer certain guidance in all the problems of lubrication and car servicing, and a portion of that lubrication guide is devoted to TBA materials.

Q. Do some of these articles in the magazines and the pamphlets you send out refer specifically to Firestone and Goodrich, and are there others that do not? A. Some refer specifically to Firestone and Goodrich; others refer to TBA in general without reference to any brand; and others will give illustrations or photographs (6620) of displays. Those photographs will show the Firestone or

Ben Halsell, Recalled, for Respondents—Voir Dire

Goodrich brand, whereas the text of the article will be general in nature. There will be no reference to any brand.

Q Mr. Halsell, I desire to show you, after they are identified, certain pamphlets or documents to find out if they are typical and representative of the items I asked you about.

Mr. Royall: May these be marked for identification?

(The documents referred to were marked Respondent's Exhibits 94, 95, and 96 for identification.)

By Mr. Royall:

Q. Are these representative of the documents about which I asked you? A. Yes, sir, they are.

. . .

(6621) *Voir Dire examination by Mr. Dias:*

Q. Who gets these? All the dealers? A. All dealers.

Q. How often do they get that? A. That particular piece was a single publication. That, as I remember it, was handed out to dealers as a hand-out at the conclusion of one of our dealer sales and service conferences.

Q. There is a notation on the back cover "Printed in U. S. A., 10-54." I assume that is 1954. Is that about the time it was handed out, in late 1954 or early 1955? A. Yes, sir.

Q. That is a one time affair? A. We maintain stocks of that item and provide it when it is needed.

Q. Do you mean that every dealer just gets it once in his career? Once he gets it he doesn't get it again? A. That is correct.

. . .

Ben Halsell, Recalled, for Respondents—Direct (resumed)

(6622) Mr. Royall: Your Honor, I would like to call (6623) attention, if I may, rather than elicit it from the witness, that 94 contains a number of items on TBA sales and promotion, and that at Pages 13 and 21 there is no reference to any specific brand. And even the illustrations there do not disclose brand names.

(6624) I would like to call attention, in connection with 95, that the illustrations with displays do include Goodrich and Firestone TBA, but that the text of the publication is general.

I want to call attention as to 96 that the TBA items and information contained about them refer not only to Firestone and Goodrich TBA, but to other popular brands of TBA which are specifically itemized by name, including Gates, various products, Belden, and Purolator oil filters and various other products.

Direct examination (resumed) by Mr. Royall:

Q. Mr. Halsell, you were asked on voir dire about whether one of these particular items were sent more than once to a dealer. I will ask you whether or not you have a series of these things on slightly different subjects, all dealing with TBA, which are distributed from time to time? A. The answer is yes.

Q. Have the various documents about which I have inquired, including those which have been put in as representative examples, have they been distributed to Texas dealers for several years prior to 1956? A. For a number of years prior to 1956.

Q. In addition to the assistance given the dealers by advertising in documents you have already discussed, does

Ben Halsell, Recalled, for Respondents—Direct (resumed)

the (6625) Texas Company provide any group educational programs for dealers, and if so, describe it? A. There is a group educational program that the Texas Company offers its dealers. There is a dealer conference, as we call the dealers' sales and service conference, and by that process we invite dealers to come in and accept the educational and the promotional materials that we are willing to present to them.

Q. At those meetings are there programs devoted to TBA as a whole and to the various elements of it? A. Yes, sir.

Q. Do you provide a guide or suggest as to how those meetings are conducted by your employees? A. There is a so-called leader's guide, which is a script to be used by the person who is conducting the meeting, and that is not an outline, it is a verbatim guide that he uses. In that way we hope to present to all our dealer organization that is willing to accept it the same kind of instruction, uniform instruction.

Q. Does that apply to TBA also? A. Yes, sir.

Q. At those meetings are documents of the type which we have had identified as Exhibits 94 to 96 inclusive, and are copies of the dealers' magazines which relate to TBA available to those who attend? (6626) A. They are.

. . .

(6627) Q. Mr. Halsell, does the Texas Company from time to time, continually, we will say, assist the Goodrich and Firestone Companies with the merchandising of their products? A. It is a continuing operation, yes.

Q. And is that done at times by direct communications to the dealers? A. Yes, sir.

Q. Is it at other times done by letters to Texas personnel who in turn transmit it to the dealers? A. At times it is done in that way.

Ben Halsell, Recalled, for Respondents—Direct (resumed)

Q. Is that extended over a considerable period of time, and is that system still in existence? A. It is a continuing practice, yes.

Q. I ask you to look at Respondent's Exhibit 97-A to C, and ask you if that is an example of that type of assistance? A. Yes, sir, it is.

Q. That relates, I believe, to the dry-charge battery, does it not? A. Yes, sir, that announces a new product. It deals with other TBA issues.

Q. But among other things, it refers to that? A. Yes, sir.

(6628) Mr. Royall: Your Honor, I offer that in evidence.

Mr. Dias: No objection.

. . .

Q. I hand you Respondent's Exhibit 98 for identification. Is that for the similar purpose of cooperating in merchandising? A. Yes. This is a letter from Mr. Wolfe, who at this time was the tire representative. The letter is addressed to the four assistant territorial managers and deals with a merchandising problem having to do with TBA.

Q. Does that relate to Firestone? A. Firestone and Goodrich, both.

. . .

(6630) Q. I hand you Respondent's Exhibit 99 for identification. Was that sent to the same gentlemen for the same general purpose and does that relate to Goodrich TBA? A. This is a letter from Mr. Fronson to the four assistant territorial managers, and the letter has to do with a seasonal promotion in connection with Goodrich products.

. . .

Ben Halsell, Recalled, for Respondents—Direct (resumed)

(6631) Q. I hand you Respondent's Exhibit 100 for identification and ask you to tell us what that is. A. This is the same general kind of a letter, but it is at a somewhat lower level in the organization. It is a letter from one of our assistant division managers to the zone managers, merchandising salesmen, and general salesmen within one division of the company.

Q. And that relates to display material of the Goodrich Company? A. It does.

• • •

Q. Mr. Halsell, what percentage of your total—of Texas Company's total gross revenues is derived under these commission contracts?

• • •

(6632) Q. Do you know approximately the percentage? A. Yes, sir, I do know.

Q. What is it?

• • •

A. The answer to your question is one-half of—less than one-half of one percent.

By Mr. Royall:

Q. Mr. Halsell, Mr. Glenn testified, on Page 385 of the transcript, that seventy percent of the money received from commissions is needed to cover direct TBA expense. Are there (6633) other expenses resulting from TBA? A. Probably one of the larger expense items there has to do with this thing we have been discussing, the cost of providing physical buildings and facilities for the handling of TBA materials. And when you consider the cost of that, and also that these expenses are not included in that total of Mr. Glenn's, the costs there go much higher, to

Ben Halsell, Recalled, for Respondents—Direct (resumed)

the point that the cost of doing this work, I should say, more than offsets the commissions that we get from them.

Q. That would embrace depreciation and amortization and repairs and so forth of those parts of the buildings devoted to TBA? A. None of those expenses are included in Mr. Glenn's computations.

Q. Based on your own experience with the TBA and commission plan, does the Texas Company compel or force or require or insist that the Texas dealers handle only Firestone and Goodrich TBA? A. The answer is No, definitely No.

Q. If they desired to do so, would it be possible, as a practical matter? A. Even if we were the kind of concern that had some inclination to do business in that way, we couldn't do it for economic reasons.

Q. Why? (6634) A. For the simple reason that there are more service stations today than capable dealers. And there is a continuing competitive activity among the supplying companies for good dealers. The dealer who might feel the least bit annoyed at our sales policy would only find it necessary to go to some nearby competitive station and there take his business with him.

In that business there are many, many closed stations, stations that don't have good dealers, don't have weak dealers, don't have any dealers. And the situation is entirely in favor of the dealer. The company is competing for the dealer and the dealer is not competing for a supplier.

Q. Mr. Halsell, I am not going to ask you about the dollars and cents involved in dealer turn-over because Mr. Glenn has testified about that. But I will ask you this: Are the dealer changes of concern to the Texas Company? A. Of great concern. If there is a big dealer turn-over, it is a costly thing for us and it increases and complicates our marketing problem enormously.

Ben Halsell, Recalled, for Respondents—Direct (resumed)

Q. Is there a normal and voluntary turn-over of dealers to a considerable extent, despite all you can do? A. There is. The dealers, in spite of the offer we make of education and accounting help and general merchandising (6635) aid, in spite of that, the dealer is sometimes disinclined to accept it, or perhaps he does attend some of the classes that we offer to him, and for one reason or another he is not inclined to use that information.

So for that reason and for others—under-financing, a man's wife gets unhappy with the service station business which requires so many hours a day of his time—so that there is a large turn-over for those reasons.

Q. What does Texas Company do in an effort to avoid that, or to reduce it as much as possible, with the dealers? A. As I said, we just do everything in our power to give to dealers the kind of education and training and general business experience they need to succeed.

Q. In addition to any legalistic feature of it, are there practical business considerations against attempting to interfere with the freedom of dealers? A. As I said before, it is an economic suicide from our standpoint. To try to force a dealer to do anything he doesn't want to do sooner or later means a dissatisfaction on his part with us, and the dealer finds no difficulty whatever in implementing that dissatisfaction by leaving our station and going to some competitive outlet that is in perhaps the same marketing community.

Q. During your experience with the company, has the company adhered to the policy which has been introduced in evidence (6636) of treating the dealer as an independent businessman and not to use any pressure on him? A. That is the policy and that is the practice.

Q. And so far as you know in your long experience with the company, has it been the continuous policy and followed by the company? A. It has been a continuous and con-

Ben Halsell, Recalled, for Respondents—Direct (resumed)

tinuing policy. We observe that policy in our day-to-day operations.

Q. Incidentally, do you know whether or not that policy is brought up at the dealers' meetings we referred to? A. It is, yes, sir.

Q. Have you any information that would lead you to believe that this policy of independence is not only known to the dealers but generally known? A. I think it is known to everybody for the simple reason that in my various observations you see all these competitive products in the stations. So it is obvious that the dealer understands that he is an independent businessman and can buy whatever he chooses to buy.

Mr. Royall: I would like to have identified as Respondent's Exhibit 101-A and B, a letter from the Purolator Products Company to Mr. Wolfe.

(The document referred to was marked Respondent's Exhibit 101-A and B for identification.)

(6637) *By Mr. Royall:*

Q. Have you recently seen a communication to The Texas Company that illustrates the general knowledge of this matter? A. Yes, sir.

Q. I hand you Respondent's Exhibit 101-A and B. Will you tell us what it is? A. This is a two-piece communication, a letter from Mr. Lightburn, who is the general sales manager of the Purolator Products, Inc., the people who make the filters. The letter is addressed to Mr. Wolfe, who is our TBA man. Mr. Lightburn says to Mr. Wolfe—

• • •

Ben Halsell, Recalled, for Respondents—Direct (resumed)

By Mr. Royall:

Q. Is the policy of the independence of your dealers, which is in effect now, the same policy which was in effect during the period from 1952 to 1956? That is, as to the independence of the dealers. A. Yes, sir.

(6638) Q. There has been no change? A. No change whatsoever.

. . .

(6639) Do you know, Mr. Halsell, whether these persons named on 101-B are Texas dealers and what portion of them are "C" dealers? A. These are the names and addresses of Texaco dealers. I believe there are 44 in all. Twenty-seven of them are lessee dealers.

Mr. Royall: Your Honor, I want to refer to Respondent's Exhibit 6, the Hochule letter, as it has been designated in considerable conversation, and have that in mind when this is offered.

By Mr. Royall:

Q. Mr. Halsell, has there been an occasion for the Texas Company to tell or remind the Association of Service Station Dealers of your Company's TBA policy? A. That occasion has arisen, yes.

Mr. Royall: I would like to have this marked for identification.

(6640) (The document referred to was marked Respondent's Exhibit 102-A and -B, for identification.)

Hearing Examiner Kolb: Is this the same as 6-A and -B?

Mr. Royall: No, sir. It happens to be signed by the same man.

Ben Halsell, Recalled, for Respondents—Direct (resumed)

By Mr. Royall:

Q. Is Respondent's Exhibit 102-A and -B for identification, a letter sent to the Texas Company by Mr. Louis M. Faber, the Retail Gasoline Dealers Association? A. Yes, sir.

Q. It refers to a conversation, does it not, and discussions, the matter of the conversation? A. Yes, sir.

Q. I note this is dated August 20, 1948; is that correct? A. Yes, sir.

Mr. Royall: Your Honor, I call attention to the fact that Respondent's Exhibit 6, the original Hochule letter, was written June 6, 1948.

I offer this in evidence.

Hearing Examiner Kolb: Is there objection?

Mr. Dias: I have no objection.

Hearing Examiner Kolb: It will be received in evidence as Respondent's Exhibit 102-A and -B.

• • •

(6641) Mr. Royall: I call attention to the fact that it is based on a conversation relating to a single complaint.

By Mr. Royall:

Q. Mr. Halsell, have you from time to time noted advertisements by Texas station dealers in national publications, indicating that they are handling non-sponsored TBA? A. Advertising of that kind does appear from time to time.

Mr. Royall: I would like to have these marked for identification.

(The documents referred to were marked Respondent's Exhibits 103, 104, and 105, for identification.)

Ben Halsell, Recalled, for Respondents—Direct (resumed)

By Mr. Royall:

Q. Mr. Halsell, Respondent's Exhibits 103, 104, and 105, are they examples of such advertising in the case of Gates?

A. Yes, they all three apply to Gates' products.

Q. I believe they all appear in the Gasoline Retailer, do they not? A. Yes.

Q. Is the Gasoline Retailer a well-known publication used by service station dealers? A. It has a wide circulation and the circulation is principally to the retailer level.

(6642) Mr. Royall: We offer the documents in evidence.

Hearing Examiner Kolb: Is there objection?

Mr. Dias: I object only to the characterization of the documents, that they are typical of advertisements appearing; until we hear a little more about it.

Mr. Royall: I don't believe I used the word "typical".

Hearing Examiner Kolb: They are advertisements. They are offered and will be received as Respondent's Exhibits 103, 104, and 105.

(The documents referred to, heretofore marked for identification Respondent's Exhibits 103, 104, and 105, were received in evidence.)

By Mr. Royall:

Q. Mr. Halsell, do your duties, prior to 1958, particularly, give you an opportunity to observe the operation of the TBA situation throughout the United States? A. It does. I am in the field a great deal, in various parts of the country. And in my work before January 1, and after, I made calls on dealers. And I find in most dealer accounts you find a variety of TBA products, both sponsored and unsponsored.

Ben Halsell, Recalled, for Respondents—Direct (resumed)

Q. Do you find in your experience that the personnel of Texas Company and the dealers whom you have seen know of this independence policy of the Texas Company? (6643)

A. They are bound to know it because the dealers operate on the policy.

Q. Is it your observation and experience that they do?

A. They do.

Q. Will you tell me whether or not the Texas Company's policy of loans to stations, repairs or painting of stations, or that type of activity, whether or not it has any relation to TBA purchases? A. We would make a loan to a dealer, we would make repairs to the dealers building or driveway, we would loan him equipment if necessary, just as readily if he handled TBA products that were unsponsored as if he handled sponsored lines. There would be no consideration there whatever.

Q. There has been some intimation—I don't think it is above that—in this case about possible cancelling of leases.

Will you give me the regular procedure for cancellation of a lease either by actual cancellation or by refusal to renew?

A. That recommendation originates with the salesman. The recommendation goes to his superior who is the zone manager for approval, and in turn to the State manager for approval, and finally to the division manager.

So that in order for a lease to be cancelled or for the renewal to be declined, there must be those four people in the organization who agree that it is the proper thing to do.

(6644) Q. Mr. Halsell, Complainant's Exhibits 114, 115, and 213 indicate an increased dollar volume of sponsored TBA sales to service stations—Texas service stations—from 1948 to 1955. Do you know what factors are involved in this increase?

Ben Halsell, Recalled, for Respondents—Direct (resumed)

Q. In answering this question Mr. Halsell, it is not necessary for you to discuss the question of inflation or automobile registration or gasoline gallonage which has been discussed by previous witnesses. What I am asking you is, are there other factors besides those which produce the increase in dollar volume?

(6645) Q. What are the factors in addition to those already testified to? A. The great numbers of new stations that we have created in the last few years. I testified before that there were 3,316, I believe, new stations. And every one of those stations has been constructed and designed with the idea that the design would lend itself to the merchandising by the dealer of TBA materials.

So that is bound to have a beneficial effect on TBA volume.

And then there is the matter of up-grading of stations. In certain marketing areas we will have a somewhat obsolete station, and in our inability to rebuild that station for one reason or another—maybe the size of the lot is too small or a permit is impossible to obtain—we will create an off-set location. Invariably when that offsetting comes there is an up-grading of the design, and always that new design is arrived at with the thought of TBA merchandising in mind.

Then there is the number of so-called rehabilitated (6646) stations, stations that we have improved on the same properties as the older station was.

Q. Is the matter affected in any way, plus or minus, in the trend of motorists to buy at one-stop stations? A. I commented on that before. Of course, this one-stop idea has caught on and it has made a great appeal to the motor-ing public. The public is now inclined to go to a service station such as we have for his tires, batteries, and acces-

Ben Halsell, Recalled, for Respondents—Direct (resumed)

series instead of going to the old-style tire store which had nothing more than just curb front.

Q. Testimony I think has indicated—Complainant's testimony—that more sponsored TBA is sold to the "C" stations than to the "D" stations? A. Yes, sir.

Q. What is the reason for that? A. The reason is that the "C" station, so-called, is just better established from a physical standpoint to do this TBA sales job.

We pointed out before, that the "D" station is the non-descript type of place where the principal income is usually from some source other than petroleum or allied products.

Q. There are, of course, some "D" stations? A. Some "D" stations do a very substantial TBA business, and some of the "D" stations do a fine job for Firestone and Goodrich, in sponsored lines.

(6647) Q. Is there a distinction between the two overall? A. Yes, sir, there is.

Q. Do you know whether the trend of increased gallonage has been greater in "C" stations than in "D" stations? A. That has gone in the same direction.

Q. Has that continued since 1952? A. Yes, sir.

Q. Do you know from your experience in TBA, whether local or medium-sized wholesalers sell a larger proportion of accessories to Texas service stations than they sell tires? A. They do sell a larger—

(6648) Q. Do you know the reasons for that? A. The reasons are obvious, yes, I know them.

Q. What are they?

Q. Go ahead, sir. A. There is greater competition, or greater volume of business done by the smaller independent wholesalers in the accessories line than in the tire line for

Ben Halsell, Recalled, for Respondents—Cross.

the reason that the people who buy tires want tires that have a national reputation, that are known nationally, and advertised nationally, such as the sponsored tires are.

And then there is the complication that I mentioned before of the enormous investment that is necessary now to do a tire business.

(6649) The different styles, the different kinds, and the cord fabric versus nylon, versus rayon, and blacks and whites, and the fact that the motor manufacturers are inclined to change wheel sizes so frequently, makes the inventory and the stocking and the warehousing and supply point problem one that is quite difficult for the smaller man to cope with.

On the other hand, the public has no brand consciousness of a coil or a set of points for a car. We don't much care whether we get one kind of spark plug or another as long as it works properly.

It is in that field that the smaller wholesaler is able to do his best sales job, and it is the one that Firestone and Goodrich have their most difficulty in competition.

Q. Do batteries come in a sort of intermediate position?

A. The battery is not in exactly the same category as the tire and tube, but the public, I think, realizes more of the brand element of the battery than the other smaller accessories items.

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(6650) *Cross-examination by Mr. Dias:*

Q. I call your attention, Mr. Halsell, to Respondent's Exhibit 93-G. I believe you stated that the U. S. Royal was not a sponsored product in that area? A. Yes.

Q. Can you tell us what areas they are sponsored in? A. In the Texas Company, Atlanta Division, which comprises the states of Tennessee, Georgia, South Carolina, Alabama, and Florida.

Ben Halsell, Recalled, for Respondents—Cross

Q. Now among the methods or rather among the reasons for choosing this particular method of having stations carry TBA products, you mentioned the varying tire sizes. Now during the time or at the time that you went into this particular system, what bearing did tire sizes have on the choice of methods? A. There were several different tire sizes at that time. I recall that the cars of the 1920's, and prior to that time, had wheels of varying sizes, much the same as cars today have.

Q. But there it was, they were all the same circumference (6651) were they not, whereas now you have different circumference tires? A. No, the tires at no time have they all been the same circumference.

Q. Then perhaps I am choosing the wrong term. When you speak of a tire, 6.00 by 15, what does the 15 indicate? A. The diameter.

Q. All right. Hasn't the diameter been the same, except for recently? A. No, there has been a variation in the diameters of wheels consistently through the years.

Q. Does that apply to passenger cars? A. Yes.

Q. In the performance of your duties, Mr. Halsell, has it been incumbent upon you to keep or observe the competitive situation in the TBA field? A. Along general lines, yes.

Q. Well specifically in connection with tires and tubes, have you had anything to do with that? A. My knowledge of competitive developments is not as complete as it was prior to January 1st. However, along general lines—

Q. I was referring to years prior to January 1st. A. Yes.

Q. I refer you to Respondent's Exhibit 98. Was the price (6652) protection feature of the Firestone and Goodrich tires, was that a unique thing to Firestone and Goodrich? A. I should say that the price protection that is referred to here was either at this time or shortly after—

Ben Halsell, Recalled, for Respondents—Redirect

ward, an industry practice and that this is a very competitive business and one company doesn't very often get very much of an advantage over another.

Q. You mentioned the scarcity of good dealers. You limit that to good dealers only? A. Well, the fact we have closed stations is evidence of the fact that there is a shortage of dealers, period.

Q. Has that always been the situation? A. Not always, no. That probably has been with us for, well during the war of course, but in the normal market, for the last 15 years, or 14 years.

Q. Are Purolator products sold by either Firestone or Goodrich? A. No.

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Redirect examination by Mr. Lorenzen:

Q. Mr. Halsell, that U. S. Tire situation in Atlanta, do (6653) you know about when the Texas Company made this arrangement with U. S.? A. I don't know the exact date. I should guess it to be two years ago, maybe two and a half years.

Q. What—it is conceivable that one of the states in that Atlanta division even now is not included in that setup?

A. It is, yes.

Mr. Lorenzen: That is all.

Hearing Examiner Kolb: You are excused.

(Witness excused.)

Hearing Examiner Kolb: Anything further?

Mr. Royall: No, sir, not from us. We conclude our evidence.

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(6677) Mr. Lorenzen: In view of that recital, I am sure you know that we are not here on any voluntary basis. We are here because there seems to be no way out. So, with the opening of this session, I would like to restate our position, which was the position taken in the court proceedings, that the order of March 9, 1961, is invalid and void. It is made in contravention of Section 5 of the Federal Trade Commission Act. It not (6678) only violates the Commission's own rules of procedure; it compels the respondents here to resort to a procedure which has not been published.

The Commission, upon finding that the evidence was insufficient here to sustain an order under Section 5 had only the ministerial duty of dismissing this complaint and the remand to enable its counsel to hunt for and if possible to discover and adduce some entirely unspecified general type of evidence, is improper and is not sanctioned by the statute or by the rules.

The Commission's action furthermore displays that type of partiality which the Administrative Procedures Act and the Constitution and the common law say a judge of the facts, whether in a Commission proceeding or otherwise, should not have.

We call attention particularly to the statement made by the present Chairman of the Commission within a few months after this order of remand was handed down finding the evidence insufficient here.

The Chairman made the statement that we at the Commission know that the sales commission contract between Texas Company and Goodrich and Firestone violates Section 5 of the Federal Trade Commission Act. We believe that this indicates that the Commission no longer has preserved that type of impartiality which it must have in order to have any further jurisdiction over this matter.

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So for these reasons and the more detailed ones which we (6679) have set out in our complaint in the District Court, we take the position that this re-hearing here is improper, is invalid, is made without any power or jurisdiction on the part of the Commission, that it violates the Administrative Procedures Act and deprives these respondents of their property without due process of law.

Now, on the basis of these statements, we now, therefore, ask your Honor to dismiss forthwith this proceeding against these respondents and to terminate this hearing at this time.

. . .

(6717) Mr. Lorenzen: Now, your Honor, I would like to object to your taking official notice either of the exhibits or the testimony or the matter stated in the notice. As we see it, I think the law is perfectly clear that this doctrine of official notice does not apply to litigation facts.

In other words, if the Commission conducts an investigation of an industry and in a nonpartisan way comes up there with some very general industry findings, there is some basis, possibly, in the doctrine of official notice for saying that this matter which the Commission has compiled in this nonpartisan manner, the Commission itself may take official notice of. But the cases and the statements in the text and the statements in the report of the Attorney General's committee dealing with the section in the Administrative Procedures Act as to initial notice specifically excluded from consideration matters known as litigation facts; that is, matters which are established in the course of a single litigation.

If I may just call your Honor's attention specifically to this report of the Attorney General's committee, it says "On the other hand, there may be put aside as not permissible or susceptible of official notice facts which may be called litigation facts. If information has come to an

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agency's attention in the course of investigation of a pending case, it should be adduced only by the ordinary process. It should be considered only if it is in the record."

(6718) Then it says, of course, it has to be offered on the basis of competent evidence.

U. S. against Shaughessy, a District Court decision, goes the same way. There is a Law Review article by Gelhorn on official notice. There he says also:

"Yet facts which are peculiar to a particular case, that is, the litigation facts, are not appropriately to be noticed. Official notice should be reserved, as is judicial notice, for somewhat more generalized propositions."

The Interstate Commerce Commission has had this very question up before it and it has come up with a suggestion that all that it can take judicial notice of is that other applications are pending, but can not incorporate in the record facts adduced therein. The decision there was:

"We will take cognizance of the fact that the aforementioned applications are pending and of the authority therein sought, but obviously, we may not give consideration to any evidence not incorporated in this record which may have been adduced in proceedings on those applications."

It seems to me that is just about as far as you can come here. Your Honor is being asked to incorporate bodily in this case evidence which was adduced in another proceeding to which Texas Company is a complete stranger. It is hearsay evidence. (6719) It was even hearsay evidence in that case, particularly in connection with two or three of these exhibits; I may call your Honor's attention to the fact that Commission counsel objected to that evidence, not only as hearsay but as meaningless. He said the ex-

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hibits are meaningless. And here we are to be bound, subject to some indefinite right to rebut, by a meaningless exhibit adduced in another case.

These exhibits do not speak for themselves by any manner of means. This notice of motion indicates, for example, that the following oil companies market private brand tires under the purchase and resale plan. What are private brand tires? What is the purchase and resale plan? There are probably two dozen types of purchase and resale plans, some of which come very close to the sales commission plan and there is no explanation of any kind here.

If Your Honor takes the next one, some companies sell batteries and accessories. What accessories do they sell? Do they sell a complete line of accessories and if so, what is included in it?

Your Honor recalls that in this very case, we had a continual hassle as to what constitutes accessories. Mr. Dias was continually cross-examining our witnesses because he didn't think the term "accessories" was plain at all and he used to go into a great list, "Do you call this an accessory" or "Don't you"? Is this a hard part or is this an accessory?"

(6720) These exhibits do not speak for themselves, so that there is no conclusion which can be drawn from those exhibits as they stand.

Addressing myself to this Crowell-Collier report here, the evidence shows that the statistics and figures there were obtained by some sort of sampling technique of interviewers who went out and asked people, what kind of a tire do you have on your car; is it a replacement tire or a new tire? On the basis of those answers, they got up this exhibit. It is not an industry-wide statistic; it is nothing that they got from the Department of Commerce or the Bureau of the Census. It is just here some people went out and asked some questions and they came up with some

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samples and somebody projected those samples into statistics and they have a table.

Now, if we are going to rebut that in any sensible way, I suppose it would mean we would have to hire somebody like Crowell-Collier to go out and see that as of the type of material in this case, we could establish that those are or are not the facts. Otherwise we are helpless. We have to, on the basis of any time limitation which your Honor has set here, accept those facts and go to bat on it.

Hearing Examiner Kolb: Doesn't the record show that the industry accepted those surveys and used them in connection with their business?

Mr. Lorenzen: We have the testimony of one man in the (6721) Firestone case who said that in connection with the exhibit, he looked at those and those formed a part of the basis upon which he drew conclusions. That is all.

Even that man is not here for us to cross-examine. This, it seems to me, is hearsay evidence compounded to such an extent that the requirement of putting reliable evidence on the case which our client is entitled to cross examine and test goes out of the window completely.

Because this would mean that in any case in this Commission, going back any number of years, if at any time there has been offered in evidence an exhibit or any testimony, then Commission counsel can come in here and offer that in evidence.

Now, no representation of that kind was made to the Court of Appeals when it stated in its order that it was denying our injunction because it did not foresee that there could be any expensive or lengthy trial here because the Commission—because your Honor had made an order limiting the government's case to three days.

Well, this would be very simple, to come in and shovel all of this material in here, and it might take us years of expensive investigation to check on any of it.

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I think that if official notice is taken on this basis, these evidences which are not self-explanatory at all, without any right on our part to cross examine, that it compounds hearsay (6722) evidence to such an extent that it is a violation of the procedural due process and also the Administrative Procedure Act, which specifically permits us to test and check and cross-examine witnesses.

Aside from that point, I have one other suggestion to make on this evidence, and that is this: Your Honor will recall that in the past, many motions have been made here directed to the fact that it was not proper for the same personnel to sit in all three of these associated cases because it was impossible to keep the facts separate and apart.

Hearing Examiner Kolb: Haven't you dragged that out long enough? Can't you let it rest?

Mr. Lorenzen: Your Honor, we have.

Hearing Examiner Kolb: There is nothing that can be brought before me on that. That has been settled before the Commission. If you want to raise that fact, raise it before the Commission, before the courts, but don't raise it before me, because I have nothing to do with it.

Mr. Lorenzen: Of course, you don't, your Honor. My point is the Commission denied it because it said?

Hearing Examiner Kolb: Why argue it before me? If you want to make a motion, make a motion, but not that one.

Mr. Lorenzen: The denial of the Commission was on the basis that it could be kept apart and now the counsel for the Commission is asking you to change the case. That is what we (6723) are attacking. The rest of it is water over the dam, but the position has been changed. That is the point I wanted to indicate to your Honor. So we do have an objection which I made to taking official notice of any of this material for the present state.

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Mr. Barton: Your Honor, I join in that objection, and particularly the Crowell-Collier survey. I submit that if the shoe were on the other foot and we were offering that cold here without evidentiary testimony or evidence, it would never go in.

Hearing Examiner Kolb: It went in before.

Mr. Barton: But there there was somebody on the stand who was being interrogated and who could be cross examined on the basis of it. Here there is none such.

Mr. Dias: In connection with Mr. Lorenzen's last remark; you may remember that among their final exhibits they put in in this case was one they took from another case—one of three cases, and I can't remember the number now, but I can find it readily. It just depends upon who wants to do it.

Now, in the second case, the witnesses, and it is one of the reasons why I furnished the transcript with this thing, I think you will find that in most instances, if not all the instances, the respondents or the witnesses in the other case testified that they made the compilation from various statistical data or publications that are recognized by the industry, so that they are recognized in the industry and not by any one (6724) particular company.

As a matter of fact, when respondents here had Dr. Beckman on the stand, he in turn referred to a flock of publications such as NPN and others from which he compiled statistics.

Now, in connection with whether or not this is possible, I call your Honor's attention to the most recent order I know of, dealing with Dayton Rubber Company, Docket Number 7604, and in that case the examiner received or took official notice on a much wider plane than anything that is being sought here.

Hearing Examiner Kolb: That has not been decided even by the Commission, has it?

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Mr. Dias: Not that I know of, no. As I say, that is the most recent thing I know of. In addition to that, there is ample case law to substantiate the position we have taken here.

Hearing Examiner Kolb: I personally feel, as I expressed in the recent conference we had in this case, that whether or not companies have sales contracts or purchase contracts, and practically all information which is being offered here could have been stipulated, and I believe Mr. Lorenzen was at one time favorable to stipulate that information.

But I think if they want to be technical about it, they would have a right to insist upon not stipulating any of this, going the hard way and going the long way around on the thing. But you are not going too long on it.

(6725) I refuse to take official notice of Documents 292 (a) through 297. However, I think it is proper for the Hearing Examiner to take official notice of the Commission's decisions, and I can take official notice of the Commission's decision in the Firestone Tire and Rubber case, Docket 6407, which I will proceed to do.

In that connection, in taking official notice of that decision, I will also specifically take official notice of the table set out on page 7 of that decision, which is a tabulation of oil companies marketing private brand tires under the purchase and resale plan.

I will also take official notice of the tabulation in that decision on page 33, which sets out the ones that are selling batteries and are going to sell only tires. That is on page 33, listing ten who sell the TBA and eight who sell only tires.

I will also take official notice of table 3 on page 34 and page 35 of this decision, which sets out the replacement tire purchases by automobile owners in 1954. I think that is proper for the Hearing Examiner to take official notice of, for these are Commission decisions in this case.

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Mr. Dias: I believe I have one part left in the official notice document—

Mr. Lorenzen: Just a moment, if I may.

Two things. One is under the court rule 4.6(c) if the (6726) new rules apply, or 3.8(c) if the old ones apply, we have to file some sort of an answer to this motion for official notice, and I assume we can agree that the statement I have made can stand as the answer, so there is no question that we are objecting.

Hearing Examiner Kolb: We discussed that the other day, about no necessity for your filing an answer.

Mr. Lorenzen: My statement stands as the answer on it?

Hearing Examiner Kolb: That is right.

Mr. Lorenzen: The other thing, of course, if your Honor does take judicial notice, we have to have whatever opportunity your Honor will accord us to bring in any witnesses that we want to rebut.

(6740) Mr. Dias: In connection with that same document, I would like to note the correction to the record at page 4470.

Line 7 should read:

“As Mr. Campbell states, Goodrich has been hurt somehow or other”

and in line 8:

“by this lawsuit,” etc.

Now, on the record yesterday, respondents' counsel made the following statement, and I would like permission to read the full statement in order that we may have it in the proper context.

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It deals with an alleged statement by the Chairman of this Commission and it has been said here that it indicates prejudgment of this case. Appearing at page 4438 of the record is the following statement:

"The Commission's action, furthermore, displays that type of partiality which the Administrative Procedures Act and the Constitution and the common law say a judge of the facts, whether in a Commission proceeding or otherwise, should not have.

"We call attention particularly to the statement made by the present Chairman of the Commission within a few months after this order of remand was handed down finding the (6741) evidence insufficient here."

It is this next passage I would like you to note.

"The Chairman made the statement that we at the Commission know that the sales commission contract between Texas Company and Goodrich and Firestone violates Section 5 of the Federal Trade Commission Act. We believe that that indicates that the Commission no longer has preserved that type of impartiality which it must have in order to have further jurisdiction over this matter."

At this point, I would like to read into the record the actual statement of the Chairman of the Commission made July 25, 1961, before the National Congress of Petroleum Retailers. The pertinent part is as follows:

"We at the Commission are well aware of the practices which plague you and we have challenged"—

I would like to underscore "challenged"—

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"—challenged their legality in many cases. You know the practices—price-fixing, price discriminations and overriding commissions on TBA. You know the companies—Atlantic, Texas, Pure, Shell, Sun, Standard of Indiana, American, Goodyear, Goodrich, and Firestone."

I can't let the record stand as it is at page 4438, because a fair and non-inflammatory repetition of the language of the Chairman definitely indicates that there has been no (6742) prejudgment. It strikes me that any clear understanding of the language indicates that any time this Commission issues a complaint, certainly that is a challenge to legality. There is no indication there that they have determined what the outcome of that complaint might be.

I have nothing further, your Honor.

Hearing Examiner Kolb: You are now closing your case?

Mr. Dias: I close, yes, sir.

Mr. Lorenzen: If I may have just a moment, because Mr. Dias did not read the whole statement.

Hearing Examiner Kolb: What is the difference? It is nothing for me to pass on anyway. If the Chairman makes rash remarks or not—I am not going to pass on that.

Mr. Lorenzen: But the statement that I did not quote this accurately I don't think is quite fair, because on the page preceding the one from which Mr. Dias read, this is what the Chairman said:

"Your problems are many and many of them are the problems of the Federal Trade Commission, too. More particularly, many of your problems are ours because they arise from practices prohibited by two of the most important statutes administered by the Commission. Discriminatory pricing prohibited by the Robinson-Patman Act and other unfair acts and

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practices and methods of (6743) of competition prohibited by the Federal Trade Commission Act."

Then, after interspersing a couple of remarks which were not in direct line, he says: "You know the practices."

Those are the practices which he says are prohibited by the Federal Trade Commission Act, and then he makes the statement which Mr. Dias quotes.

I think from that that it was certainly a fair inference that the Chairman of the Commission was saying that we at the Commission have prejudged this matter and decided that a sales commission contract between Firestone and Texaco and Goddrich violates the law.

If I may, in view of the fact that counsel has closed, I would like first of all to renew my motion made at the commencement of the proceeding yesterday that in this proceeding be dismissed for the reasons stated at that time.

Hearing Examiner Kolb: That motion will be denied for the reasons stated yesterday.

Mr. Lorenzen: Now I would like to move on the basis of the additional matter which has come before your Honor at this hearing, to dismiss because no additional competent evidence of any kind has been adduced here which can conceivably change the result reached by your Honor as to the fact that the sales commission contracts here between these two parties as practiced, on the basis of the evidence in this record, does (6744) not violate Section 5 of the Federal Trade Commission Act, and nothing herein can change the similar decision by the Federal Trade Commission which, itself, took the same view and held that the evidence was insufficient to show that there was any violation of the law.

In that connection, without reiterating the objection which I made to the evidence yesterday, I would like to say we strongly adhere to the position that no official notice can be taken of these matters which the Federal Trade Commis-

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sion found—I am referring now to the three tables as to which, on page 4485 of the record, your Honor stated that you would take official notice specifically of three items in the opinion of the Federal Trade Commission.*

In view of the fact that those particular tables, as shown by the citations supporting the motion filed for taking official notice, were pure hearsay, were characterized as meaningless and hearsay by counsel for the Commission, it seems to me that official notice is not proper here for that reason, as well as for many others which I stated yesterday, and I don't think that we ought to be called upon to assume the burden of checking out these statistics and trying to decide whether to answer them, when the competency of the evidence is greatly in question.

Now, I have one other point on that which I did not emphasize yesterday, because the documents not having been (6745) admitted when I made the objection, I would not be called upon to make it. That is this, that there is no other evidence, no residual evidence in this case now, offered on this hearing, which is not hearsay. In the Shaughnessy case which I called to your Honor's attention, it was held that the court could take official notice in that case of a particular bit of hearsay evidence, but the ultimate decision was that, there being no other evidence in the record to support the point made by the hearsay documents of which official notice was taken, there should have been a decision against the contention sought to be supported by that evidence.

So on that additional ground, there is no doubt in my mind that there is no competent evidence here of any kind which could form the basis of a changed decision upon this re-trial. So for that reason, too, I make this motion to dismiss at this time.

Hearing Examiner Kolb: The motion will be denied.

Mr. Lorenzen: I suppose the next move is up to us.

Well, we feel unquestionably that these documents, even if your Honor does consider them entirely immaterial and

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irrelevant, they have nothing to do with the issues presented here, they can't prove anything.

On the other hand, we are in the position where we think we ought to be accorded the right and privilege in the Administrative Procedures Act and the rules of this Commission, (6746) to at least have a little time to turn around and decide what we are going to do here.

Now, the problem—yesterday, I think your Honor may have gotten the impression that this request was not made in good faith and we were delaying it, which isn't the fact at all, because the real answer to the problem is this: No matter how much your Honor may feel we should have anticipated what counsel was going to do, the fact is we did not anticipate this official notice business.

This we didn't. The first notice we had of this was last week, July 11. We may have been stupid to do it, but we just felt that facts in another case, where the case had been carefully separated from ours in the past, the doctrine just would never apply. So we thought that if government's counsel was going to call witnesses, he would give us reasonable notice as to what witnesses were going to be called, and on cross examination, we would have then had an opportunity to formulate some sort of an answer here. If there was a witness who was competent to testify to these facts, he was obviously competent to be cross examined and to bring out our side of it.

If I may just give you an example, there is a table of which your Honor has taken official notice which is supposed to show the percentage in a replacement tire market of some of the companies. Now, the actual figures, whatever they may be, are such closely guarded secrets that we can't even get them out (6747) of Firestone, with whom we have some sort of a contractual relationship. Now, this presents a problem to us. We think that if you are going to accord any weight to that table, and I don't think any ought

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to be accorded to that, but if you are, we should certainly be given a reasonable time to find out what the facts are to see whether that table for one year is sufficiently accurate, for one thing, and to see whether it would not be desirable to adduce whatever the accurate figures are for some other years.

That is one problem on that particular table.

Now, we have other tables in here which purport to state that between certain oil companies and certain tire companies, there are certain types of contractual relationships. We know from looking at the tables, and I guess we could have shown if somebody had come to testify as to how those tables were made up, that they do not include all of the tire companies, they do not include all of the oil companies, and they certainly do not include all of the relationships between those companies.

In other words, that table standing by itself, we think, is entirely worthless on this record, but I don't know whether the Commission, in view of its attitude toward this case which we have discussed earlier today is going to take what we concede to be the only reasonable and proper attitude.

Under those circumstances, we ought at least to have (6748) a reasonable amount of time to turn around and see if we can't obtain any competent evidence to counteract anything which we may determine ought to be changed, ought to be counteracted in order to give an accurate and true impression of what things are like in this particular field.

So our plea to you this morning is that we obtain a reasonable amount of time in which to exercise our right under the rules of the Commission and the Administrative Procedures Act to rebut, if we deem it necessary, these matters of which your Honor has taken official notice here.

. . .

Hearing Pursuant to Remand Order

(6753) Mr. Lorenzen: When your Honor recessed this morning until 2:00 o'clock this afternoon, you were advised that we would, on our return here at 2:00 o'clock, advise you as to Texaco's position.

In essence, and I hope without being too repetitious, this is it:

I may say this is it without limiting the more complete statement which I think I made this morning.

Number 1: No evidence whatever has been adduced against Texaco in this remand because the tables from the Firestone case, of which your Honor was asked to, and did take what has been described as official notice are hearsay, as to which we have no right of cross examination, some of which Commission Counsel characterized in the Firestone case as meaningless, and therefore taking official notice thereof violates elementary concepts of due process, the Administrative Procedures Act, and the Commission's own rules.

Two: Be that as it may, if, arguendo, it be assumed that the doctrine of official notice does apply to the tables of which official notice was taken, the same due process requirements and, indeed, the literal language of the (6754) Administrative Procedures Act and the Commission's parallel rule, which follows the statute, says that Texaco is entitled to an opportunity to rebut such documents if it wishes to do so.

Three: Our client does not know at this juncture whether or not rebuttal is needed, because, among other things, we are disposed to agree with Commission counsel's characterization that the only evidence supporting the tables in the Firestone case is meaningless. But in any event, our client is entitled to a reasonable opportunity in which to determine whether it wishes to rebut any of the matter noticed, while at the same time maintaining the basis position that such matters are inadmissible and that they are meaningless.

Hearing Pursuant to Remand Order

Four: It is no answer that we may have received an intimation last Thursday that official notice might be taken of some of the tables in the Firestone case, because at that time, we had not yet submitted to your Honor our legal argument to the effect that the doctrine of official notice should not be applicable to the documents tendered.

In fact, we had only received the government's motion to apply this doctrine of official notice to the documents a few hours before our conference in Washington. Our client certainly had reasonably hoped and expected that our arguments would be sufficiently persuasive so that the tables in question would not have been officially noticed. For that reason, they did not anticipate that they could have been expected to have (6755) witnesses here today ready to rebut something which they had believed would not be a part of the record.

Likewise, it is no answer to say that our client might have stipulated some of the facts, because our client had the undisputed right not to stipulate as to matters deemed to be incompetent, hearsay, and irrelevant and immaterial.

In the circumstances, we request that your Honor recess these hearings until ten a.m. next Monday.

At that time, Texaco will then be prepared, either to offer rebutting data or otherwise proceed as it may then be advised.

Mr. Dias: May I just be heard on one facet of this, your Honor? Very short.

I think most of this is addressed to your discretion. While I oppose any delay in these proceedings, I will leave that to your discretion.

But I would like to clarify something that I think is inadvertent, when counsel says that Commission counsel has characterized these tabulations as meaningless. I would like the record to show that Commission counsel in Docket 6487 characterized the documents as meaningless, and as

Hearing Pursuant to Remand Order

you are well aware and all of us who have had any experience in the law, we sometimes make mistakes and we are reversed by higher authority.

That obviously is what happened here. In any event, (6756) it was not this counsel, Dias, it was not his opinion that this material is meaningless. It was the counsel in Docket 6487. I would like the record to be clear as to that so there is no indication that there is an inconsistency in my position in this matter.

I am relying on the fact that the Commission overruled Commission counsel in the other matter.

Hearing Examiner Kolb: On June 27, I issued an order setting this case for hearing and providing for the proceeding by consecutive hearings until completion of the testimony. That was held up two or three times requesting a response at the request of the respondents because of pending court proceedings in that hearing.

However, we have had since June 27—now we intend to proceed with consecutive hearings. I see no reason why we can not do that now, and I will set this case over until tomorrow morning at 10:00 o'clock.

Mr. Lorenzen: May I have just a moment?

Mr. Royall: Will your Honor indulge us a moment to discuss this?

Hearing Examiner Kolb: Yes.

Mr. Dias: May we have a recess, sir?

Hearing Examiner Kolb: All right; we will take a recess.

(Short recess.)

(6757) Mr. Lorenzen: Your Honor, our client advises us that it is almost a useless gesture to come back tomorrow because they were on the telephone all last night endeavoring to see what could be done to meet this unexpected situation. However, as your Honor has ruled, we shall be back here tomorrow at 10:00 o'clock. If it is at all possible to get up any evidence overnight, we will have it.

Hearing Pursuant to Remand Order

We can't hold out much hope for it. If it is impossible, we will have to advise your Honor to that effect and protesting your Honor's determination, we know at this stage, of course, we are bound by that. So I think that is all we can do at this time.

Hearing Examiner Kolb: Well, I will relent by setting this over until the day after tomorrow. That is Thursday morning at 10:00 o'clock.

Mr. Dias: May I be heard, your Honor?

I want the record to be perfectly clear that this is not an overnight decision that respondents have to face here. They have had the information since July 11th. So when we talk about overnight, bear in mind that they have had five days, and I would assume that counsel would have to view the thing from its most pessimistic light as well as the most optimistic. So it is not an overnight proposition.

I have no objection to setting Thursday, understand, (6758) but I do want the record to be clear in that regard.

Hearing Examiner Kolb: Thursday morning at 10:00 o'clock, we shall proceed with the trial.

Mr. Lorenzen: I know by my silence, your Honor does not think that I am happy about it.

Hearing Examiner Kolb: I would not ask you to be happy, Mr. Lorenzen, about it.

Mr. Lorenzen: Our client still thinks that that is too short notice to enable them to make the decisions and get the evidence.

We want to note that on the record, but we will do what we can.

Hearing Examiner Kolb: I know, but this order has been out for some time. This matter has been pending in the court for a year now on the injunction. I think it is time to get the thing finished.

Hearing Pursuant to Remand Order

(6765) Hearing Examiner Kolb: The hearing will come to order.

Mr. Sullivan: If your Honor please, I am speaking this morning because I feel that I have been intimately thrown into the position of Texaco, and as counsel for Texaco I think I can fairly state to you, your Honor, exactly how we find ourselves today. I feel that there have been some remarks made during the course of this week, your Honor, that might imply that Respondents have been employing dilatory tactics in connection with these hearings.

Under the circumstances present here in this remand we firmly believe that such remarks are wholly unwarranted.

Consider for a minute the posture, if you will, that Texaco finds itself in. For reasons which have been expressed to your Honor we believe that the Commission's remand order in this proceeding is illegal, and we have fought desperately in several courts and indeed are still fighting in courts today to establish the point that our basic rights have been violated.

Having no alternative we have appeared at this hearing to defend against what we believe would be further evidence on the rather all-encompassing issue here of competitive affects.

Now, instead of a proffer of evidence through the (6766) mouths of witnesses which we are convinced we would have been able to meet through and destroy through cross examination we were met we feel with an unprecedented extension of the doctrine of official notice. This we believe has had the undoubted effect of shifting the entire burden of proof and the burden of going forward with these hearings to the Respondents.

Now, this we contend is completely foreign to the American system of jurisprudence.

On July 17, after the Commission counsel in support of this complaint rested his case, Texaco informed your Honor

Hearing Pursuant to Remand Order

that it would require at least until July 23 at 10 a.m. in which to make a determination as to whether or not it would rebut the three tables from the Firestone case.

Our position with respect to the three tables has been explained in detail to your Honor on July 16 and July 17. However, so there can be no mistake, Texaco believes that to admit compounded hearsay against a respondent without any foundation testimony whatsoever and without the right of cross examination and the consequent shifting of the entire burden of proof countervenes all applicable Constitutional and statutory requirements.

Now, the first table of which your Honor has taken official notice purports to show the arrangement between 18 oil companies and some 11 tire companies with respect to the (6767) marketing of "private brand tires" under the "purchase-resale plan."

Now, the second table purports to show the products offered for sale by 18 rubber companies, and the third table based upon a survey taken by individuals unknown who never appeared in Court purports to show replacement tire purchases by automobile owners in 1954.

This collection of hearsay material which was rightly described as being worthless and unreliable by the Commission counsel in the Firestone case has now been officially noticed pursuant to what we contend is an illegal remand which call for the taking of evidence on market data from which an assessment might be made as to the competitive affects of the sales commission plan.

Now, it is Texaco's position that the sum total of the three tables adds up to zero when measured against any probative evidence standard.

However, Texaco is entitled to a reasonable opportunity to make a determination as to whether it will exercise its undoubted right to introduce rebuttal evidence. We could go two ways on rebuttal evidence, as I see it, your Honor.

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We could attempt to introduce or proffer to your Honor what we believe would be equally unreliable and meaningless, statistics culled from various sources, various periodicals and so forth, or, a rebuttal could consist of a (6768) frontal attack on the statistics and each of them which were officially noticed by your Honor.

Now, considering the fact that the motion asking your Honor to take official notice was not received until July 11 and was not granted in part at least until July 16, we believe that the essence of fair play and due process calls for reasonable opportunity to make a decision in this matter. It is not a decision that can be made in 48 hours. It is a decision we believe which requires mature reflection.

Now, if we decide to rebut it is our present judgment that an effective rebuttal would require the production of documents from and the taking of testimony from many, if not all, of the companies listed on the three tables.

Now, to illustrate, if we attempt to and decide to attack the accuracy of Table No. 3, the survey, which purports to reflect replacement tire purchases in the year 1954, we find this your Honor: We find that to our knowledge there is no other comparable survey in existence for the year 1954, and we also find, if your Honor please, through inquiries that the information, the exact figures or nearly exact figures which would be required in order to rebut this table, are considered by the tire companies, small and large, as trade secrets, which we are informed they will not voluntarily divulge.

Now, this means that if we determine on this course (6769) we are going to be forced to request the issuance of subpoenas duces tecum and subpoenas ad testificandum to individuals in and to all of the companies listed on the exhibits in an attempt to obtain accurate figures.

Now, this, of course, unfortunately would be an immense and a time-consuming undertaking, but it would be an un-

Hearing Pursuant to Remand Order

dertaking, your Honor, which is not of our making. In addition, if we determine to make a rebuttal as to the other charts we would give serious consideration to the presentation of testimony, documentary and otherwise, as to the sales commission plans which other companies, tire companies, that is, such as General, Seiberling, Dayton, Lee, Gates and Dunlop have with other oil companies.

To illustrate further, we must consider the possibility of attempting to show through statistics, the overall effect of the sales commission method of distribution, and the steady decline in the market shares during the period from 1946 through 1961 by those tire companies which utilize the sales commission plan.

Now, the foregoing illustrations are meant your Honor, to point up the enormous undertaking which we have been confronted with here and which has been thrust upon us by this shifting of the burden of the proof.

Now, the material of which I speak, your Honor, can not be obtained in some magic drawer or through the pushing of (6770) some automatic button. It is going to require a lengthy and costly production of material by process of this Court, and the further complication of making this decision is to whether or not we wish to undertake what would be a further expensive proceeding.

Now, I believe your Honor can see from the foregoing that it is an impossibility for Texaco to proceed with such an immense undertaking at the very minimum until Monday morning at 10 o'clock. And we respectfully urge your Honor to put this matter over until Monday morning at 10 o'clock to give us this opportunity to come to this decision as to whether or not we are going to call for the issuance of all these subpoenas which is the only course apparently open to us.

Hearing Examiner Kolb: Your motion is for an extension of time until Monday to proceed?

Hearing Pursuant to Remand Order

Mr. Sullivan: Yes, your Honor, during which time we will prepare as best we can, and then consider when we come in here Monday morning the request to your Honor for the issuance of subpoena duces tecum and subpoenas ad testificandum addressed to such witnesses and such companies as we are able to list between now and then.

Hearing Examiner Kolb: Your statement is demonstrated to me as a stalling tactic all the way through.

Mr. Sullivan: I take it—

Hearing Examiner Kolb (interposing): Instead of (6771) explaining it you have shown me you are still stalling and intend to stall.

I set this case down. We went over this stuff before. I set this case down this morning to proceed. Now you proceed this morning.

Motion denied.

Mr. Sullivan: Your Honor, in that event since we cannot have what we believe is adequate time we now request you to issue subpoenas ad testificandum, if you will, in blank, numbering approximately 25, and we request also that you issue in blank subpoenas duces tecum, the language for which we can give your Honor, and during the remainder of the day we will attempt as best we can to fill in both the names of the companies and the names of the individuals, and we will set them down at the earliest practicable return date.

Hearing Examiner Kolb: The request for issuance of subpoenas duces tecum in blank will be denied. You can take your appeal to the Commission and the Circuit Court of Appeals, and all the way through if you want to. Go ahead.

Mr. Sullivan: Your Honor, I take vigorous exception to the use of the word "stall" here. I think the record is quite—

Hearing Pursuant to Remand Order

Hearing Examiner Kolb (interposing): The first thing you have not done is evaluate the testimony that has been put in.

(6772) Mr. Sullivan (interposing): Evaluation of the testimony—

Hearing Examiner Kolb: If you are going to have to go down to the last nth degree on everything that has been put in to rebut it, you know as well as I do that that is just dragging the thing along. I am not going to permit it to be dragged along.

Mr. Sullivan: Am I to understand, your Honor, if I were to present a written motion right here and now for the production of these necessary documents and these necessary witnesses that your Honor has said it would be an idle gesture?

Hearing Examiner Kolb: I am not denying anything in advance. You proceed on whatever you want to do. I will take care of it when I receive it.

Mr. Sullivan: May we have approximately an hour in which to prepare such a motion, your Honor?

Hearing Examiner Kolb: This was set down to proceed right at 10 o'clock.

Mr. Sullivan: Will you consider, your Honor, that my oral request is such a motion, waiving the requirements of writing?

Hearing Examiner Kolb: You have not demonstrated to me in your motion the necessity for subpoena duces tecum.

Mr. Sullivan: Well, your Honor, would you prefer (6773) that my remarks and my request to you orally here have been in writing?

Hearing Examiner Kolb: If you want to appeal to the Commission and then to the Circuit Court of Appeals you better make your request in writing.

Go ahead.

Hearing Pursuant to Remand Order

I will give you one hour to prepare your documents, whatever you want to, and submit them to me.

Mr. Sullivan: Thank you, your Honor.

. . .

Mr. Sullivan: I asked your Honor's indulgence for a short break during which we could prepare this written form of motion which I described and I tender my apologies for having gone over the time limits, your Honor, and with the rush of time we have had to make some interlineations here in pen, your Honor, to make clear that this is the motion of respondent Texaco only.

I might call your attention, your Honor, to the fact that the annexed statement in support of the motion is the transcription of the remarks that I made earlier this morning.

. . .

(6775) Mr. Sullivan: I would just like to make a remark or two, your Honor.

First, with respect to counsel in support of the complaint's assertion that he questions the timing of this motion, (6776) I think it was made perfectly clear to me this morning, your Honor, the quandary in which we were placed by the decision which took official notice of this material. It was our entire point that we should have had the opportunity to make a studied decision and not have to be forced into an immediate on the spot decision.

Now, your Honor's ruling this morning, which in effect forces us to go forward, explains the timing on the motion.

Now, this, of course, is the motion and the burden and so forth is all caused by the ruling which shifted the burden of proof, and as to why we need the subpoenas addressed in blank, your Honor, I think that that is relatively self-explanatory.

Hearing Pursuant to Remand Order

We will, during the balance of the day and tomorrow ascertain the names and addresses of those people that we believe should give oral testimony here and, as indicated in the motion, we will have those filled in by the end of the day tomorrow. And I think that is expeditious action under any set of circumstances, especially those present here.

. . .

(6777) Mr. Sullivan: I was there, your Honor.

Hearing Examiner Kolb: That is right. You were there.

. . .

(6778) I hate to say it is purely a stalling tactic. Maybe you have some other reason for it. What it is, I don't know. But I told you this morning that the statement which you made was not sufficient to warrant me to issue a subpoena duces tecum; secondly, that I would not issue a subpoena duces tecum in blank. You have incorporated your statement which you made on the record which I had already said was not sufficient to warrant the issuance of the subpoena duces tecum. Consequently, I do not see what else I can do except to refuse to accept this request for subpoena.

. . .

(6779) Mr. Sullivan: Your Honor, in view of your Honor's ruling, we have as far as Texaco is concerned no choice at this point, we cannot proceed further, and we will have to take whatever action we deem necessary to attempt to support our position, that your Honor's ruling effectively blocks us from an opportunity fully and freely to rebut this officially noticed evidence.

. . .

Oral Argument Before Commission

(6806) Mr. Lorenzen: I think undoubtedly it was sufficient. There was evidence in this case, reams of it, after fifteen years of implementation of the contract, that there had not been the slightest hazard to competition. Of all the Texaco dealers, less than thirty percent ever bought any of this sponsored TBA, after the contract had been going for fifteen years.

Now this—the order which was made, if I may point out, did have this virtue, that it was specific. It sent the case back only for taking further evidence concerning the competitive effect, specifically and in so many words; but it went further than that, it limited the power of the Examiner. It said, "It is further ordered that after receipt of such additional evidence, the Hearing Examiner may indicate any changes he may wish to make in his initial decision in the light thereof."

And one of our points is, and our main point is, that the Examiner did not even purport to follow this, but what he purported to do was change his mind, not on the basis of new evidence, but he went back and reviewed the record to reverse his own findings completely, and then came up with a conclusion diametrically opposite to what he had done when the case was before him the first time, and without reference to a single one of the three items which he had officially noted.

. . .

(6813) Commissioner Elman: Nothing new, and then we are back to where we were in March of 1961!

Mr. Lorenzen: You are back, Mr. Commissioner, you are back to where you were. Because I suppose, under your order, he had to grant a motion to dismiss, and he should have, because he had only one power which the Commission gave him, and that was the power to change his opinion in the light of any new evidence as to competitive effect. His

Oral Argument Before Commission

power on remand was limited. The Examiner doesn't have any general power, he has the specific power which the Commission gives him. And if it is established that there is no new evidence, and I am sure that is right, then he had nothing to do except to say, "I have no changes in my initial decision, complaint counsel introduced nothing whatever."

(6840) Mr. Lorenzen: If I may answer, to begin with, your question. Mr. Commissioner, about this old record, I think we have had enough lack of due process here in this proceeding to get into that. The order upon which Texaco acted and relied in good faith limited this remand specifically to any additional evidence as to competitive effect and instructed the Examiner to make changes only in the light thereof, in the light of such evidence.

Now that being the case, it seems to me you can't today on the 4th of April, 1963, come in and say what was really meant was that the Commission was going to reconsider this old record and decide whether the first time its decision was a poor one—

Commissioner Higginbotham: Let me—

Mr. Lorenzen: —that we should go some place else—

Commissioner Higginbotham: —where is the due process problem, arguendo, in this aspect, if on the remand you say to reconsider and evaluate the evidence which came up to the Commission the first time, that they did violate competitive injury, but is that a due process problem, or is that (6841) *stare decisis*?

Mr. Lorenzen: There is *stare decisis* also, but that is not, Mr. Commissioner, what I was talking about. What I am talking about is this: had this case been remanded with notice to Texaco that what was to be done in this case was to come back and re-examine the old record, we would have

Oral Argument Before Commission

to put on another hundred witnesses to show that there was absolutely nothing to this theory that there was any adverse competitive effect here.

We supposed that the Commission meant what it said, that this case was going back, not for re-examination of the old record, but to try to fill one specific gap as to which the Commission decided that the evidence was insufficient and we limited ourselves to that. There is not one word of argument in the brief here before the Examiner, or before you gentlemen here, which goes to the old record or discusses it in any way whatever. I did not go into it in my original argument; in view of the fact that there have been some statements made in respect to it, I might just want to call attention to a few specific things, just to ease the Commission's mind about a few things that have been said that I think are baseless, but we did not try this remand on the basis of going back and starting all over again, and I have not argued on that basis.

I may suggest one other thing, in addition to this (6842) lack of notice and lack of due process, what is going to happen, if that is going to take place, to this doctrine of the omniscient expertise of an administrative commission, if in 1961 you can decide this record does not state a claim on which you can grant relief and in 1963 you decide it does. It seems to me that if this Commission is an expert body, it ought to, on the same facts, come up with the same answer.

**Petition to Review and Set Aside an Order of the
Federal Trade Commission
(Texaco Inc.)
(June 12, 1963)**

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 17,915

TEXACO INC.,

Petitioner,

against

FEDERAL TRADE COMMISSION,

Respondent.

*To the Honorable, the Judges of the United States Court of
Appeals for the District of Columbia Circuit:*

Petitioner, Texaco Inc. (Texaco), a corporation, respectfully petitions this Honorable Court pursuant to Section 5(c) of the Federal Trade Commission Act (15 U. S. C. §45(c)) to review and set aside an Order and Decision of the Federal Trade Commission (the Commission), entered on April 15, 1963, and served upon Texaco on April 19, 1963, in a proceeding entitled "*In the Matter of The B. F. Goodrich Company and The Texas Company, corporations, Docket No. 6485.*"

In support of this Petition, Texaco respectfully shows:

Texaco's Petition to Review and Set Aside Order

I. Jurisdiction and Venue

1. The jurisdiction of this Court is invoked pursuant to, and venue is based upon, Section 5(c) of the Federal Trade Commission Act, 15 U. S. C. §45(c), which provides that

“(c) Any person, partnership, or corporation required by an order of the Commission to cease and desist from using any method of competition or act or practice may obtain a review of such order in the court of appeals of the United States within any circuit where the method of competition or the act or practice in question was used or where such person, partnership, or corporation resides or carries on business, by filing in the court, within sixty days from the date of the service of such order, a written petition praying that the order of the Commission be set aside.”

2. Texaco, a Delaware corporation, is qualified to transact business in and carries on business within the District of Columbia. The order entered by the Commission, among other things, requires Texaco to cease and desist from acts, practices and methods of competition used within this Circuit. Tires, batteries and automotive accessories have been and are being purchased by outlets for Texaco petroleum products within the District of Columbia pursuant to arrangements of the character prohibited by the aforesaid order of the Commission.

II. Nature and History of the Proceedings

3. On January 11, 1956, the Federal Trade Commission, after an investigation which began in 1952 or even earlier, issued a complaint under Section 5 of the Federal Trade Commission Act (15 U. S. C. §45) against Texaco, petitioner herein, and The B. F. Goodrich Company.

Texaco's Petition to Review and Set Aside Order

4. In substance, the complaint challenged the legality of agreements under which Goodrich paid Texaco a commission for Texaco's services in promoting the sale of Goodrich's tires, batteries and accessories (TBA) to dealers and distributors selling Texaco gasoline. It was claimed that these agreements and similar agreements between Texaco and The Firestone Tire & Rubber Co. and between Goodrich and five other oil companies, and the acts and practices of Texaco and Goodrich thereunder, constituted unfair methods of competition and unfair acts and practices in commerce contrary to said Section 5.

5. Answering the complaint on April 16, 1956, Texaco denied that its sales commission agreements violated the law. It asserted that, on the contrary, its sales commission plan, as carried out by it, is an efficient method of stimulating the distribution of TBA products to consumers through many service stations in the United States; that it is a proper competitive method of marketing which benefits not only suppliers of TBA products and Texaco, but also dealers and distributors of petroleum products and consumers; and that it is part of intense and proper competition for good will and patronage. In addition to denying all the allegations of wrongdoing in the complaint asserted against its long-standing sales commission arrangements Texaco pleaded several affirmative defenses and challenged the sufficiency of the complaint.

6. An interlocutory appeal to the Commission prior to any hearings in this case resulted in a directive that evidence be received concerning the "competitive effects" of all the sales commission agreements challenged by the complaint, that is, the arrangements between Texaco and The Firestone Tire & Rubber Company and between Goodrich

Texaco's Petition to Review and Set Aside Order

and five oil companies other than Texaco, and not be limited to the relationship between Texaco and Goodrich (Order, November 28, 1956). During the extensive hearings (which began in 1956 and did not terminate until December, 1958) complaint counsel had full opportunity to adduce whatever evidence, if any, was available to him and the Commission to support the charges made in the complaint.

7. On the same day on which the Commission issued its complaint against Texaco and Goodrich it also issued almost verbatim complaints against The Goodyear Tire & Rubber Company and The Atlantic Refining Company (Docket 6486) and The Firestone Tire & Rubber Company and Shell Oil Company (Docket 6487). All three cases were assigned to and heard by the same Hearing Examiner, tried on parallel schedules and decided by the Hearing Examiner on the same day.

8. On October 23, 1959, the Hearing Examiner rendered his Initial Decision in this proceeding (as well as in Dockets 6486 and 6487, the two other TBA cases). As to the basic issue in the case, the validity of the sales commission agreements to which Texaco and Goodrich were parties, the Hearing Examiner concluded that these agreements did not violate Section 5 of the Federal Trade Commission Act. He found that neither the sales commission agreement between Texaco and Goodrich nor the agreements between Texaco and its dealers contained any provision requiring the dealers to purchase only Goodrich TBA; that the housekeeping provisions of the Texaco leases were neither unreasonable nor oppressive; that the renewal and cancellation provisions were in conformity with those ordinarily appearing in property leases; that the consideration for the commissions paid Texaco by Goodrich was based on

Texaco's Petition to Review and Set Aside Order

substantial services rendered by Texaco in promoting the sale of Goodrich TBA to Texaco dealers; and that no inference or implication could be drawn simply from the contractual relationship between Texaco and its dealers that the degree of control by Texaco over its dealers is sufficient to force dealers to purchase Goodrich TBA. Although the complaint had alleged that various anti-competitive effects followed from the adoption and use of the challenged agreements, the Examiner made no findings supporting such allegations even though requested to do so by complaint counsel. The complaint was dismissed as to Goodrich. As to Texaco, however, the Examiner, disregarding substantially the entire record, found what he considered to be coercive practices and, construing the complaint as sufficiently broad to entitle him to do so, entered an order directing Texaco to cease and desist from "overt acts of coercion". Ignored by the Examiner were the great body of undisputed statistical evidence demonstrating the freedom enjoyed by Texaco dealers and the uncontradicted testimony of eighty witnesses, including fifty-nine Texaco dealers, as well as Texaco's policy statements and its uniform written instructions forbidding coercion, all of which established overwhelmingly the complete absence of any coercive practices. With 38,000 Texaco dealers involved during the years covered by the proceeding, the Examiner purported to rely upon evidence totally without probative value consisting of the impeached or wholly irrelevant testimony of five former Texaco dealers whose credibility the Examiner's own findings indicate to be most dubious. A copy of the Initial Decision filed October 23, 1959 and of the order attached thereto is annexed hereto as Exhibit A.

9. Texaco appealed from the Hearing Examiner's order as totally without support in the facts and the record,

Texaco's Petition to Review and Set Aside Order

challenging, in particular, his findings and conclusions as to coercion. Complaint counsel also appealed. In Dockets 6486 and 6487, the two other TBA cases, appeals were likewise taken.

10. On March 9, 1961, the Commission decided the appeals in all three such TBA cases. Unlike its action in the other two TBA cases decided at the same time, the Commission in this proceeding did not endorse the Hearing Examiner's findings of coercion. Treating the issue of coercion as beside the point, the Commission avoided the necessity of specifically rejecting these findings as demanded by Texaco by holding "that Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics". In the context of the appeal and in the light of the opinions simultaneously handed down in the other two TBA cases, the inference is inescapable that the Commission did not regard the record as supporting the findings of overt coercion by Texaco or the order based upon them. In the view of the Commission, the legality of the particular method of distributing TBA employed by Texaco turned upon its competitive effects. Since almost a decade of investigation and trial had failed to develop any evidence of adverse competitive effects, the complaint should have been dismissed for failure of proof. Instead, the Commission, declaring that the record did not "contain sufficient market data to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents" issued an order remanding the proceeding for further evidence. The order of remand of March 9, 1961 directed the Hearing Examiner to receive "such further evidence concerning the competitive effects of the respondents' practices as may be offered in conform-

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ity with the views expressed" in the Commission's opinion. The Hearing Examiner was authorized "after the receipt of such additional evidence" to indicate what changes, if any, he wished "to make in his initial decision in the light thereof." Such remand order was issued without the request of any party to the proceeding, without any claim by any party that there were changed conditions of fact or law or that there was any newly discovered evidence or, indeed, any additional evidence whatsoever to what the record already contained relative to competitive effects. Copies of the Order of Remand and of the Opinion of the Commission, dated March 9, 1961, are annexed hereto as Exhibit B and C.

11. The Commission made a totally different disposition of the parallel appeals taken in Dockets 6486 and 6487, the other two TBA cases, to which Texaco was not a party. In both, it viewed the record as supporting a cease and desist order enjoining further use by those companies of the sales commission method of distributing TBA; and it affirmed the Hearing Examiner's findings that agents of the oil companies involved—Shell and Atlantic—had coerced a substantial number of dealers to purchase substantial quantities of sponsored TBA, and that the oil companies had accepted the benefits of such coercion. The opinions also contained findings that each such oil company had used its power as a major wholesale and retail distributor of gasoline and as a lessor of numerous valuable retail gasoline distribution facilities to cause its dealers to purchase very substantial amounts of TBA. The opinions in those two cases concluded that the sales commission agreements between the oil company named in the proceeding and specific rubber companies had unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale

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and retail levels. Appeals are pending in both these proceedings. (The Goodyear Tire & Rubber Co. and The Atlantic Refining Company have asked the Court of Appeals for the Seventh Circuit to review the orders in Docket 6486. The Firestone Tire & Rubber Co. and Shell Oil Company have taken a similar appeal to the Court of Appeals for the Fifth Circuit from the orders entered in Docket 6487.)

12. In the instant proceeding, as soon as attempts were made to implement the remand order of March 9, 1961, Texaco and Goodrich brought an action against the Commission, its members and the Hearing Examiner in the District Court for the District of Columbia, entitled *Texaco Inc., et al. v. Federal Trade Commission, et al.*, Civil Action No. 2219-61. Texaco contended that, after at least nine years of investigation and trial, the Commission, having found the evidence insufficient to support its charges, was without authority or discretion to remand for the receipt of "further evidence" not shown to exist. As is more fully contained in the District Court and appellate records to which reference is made herein and of which this Court is respectfully asked to take judicial notice, Texaco and Goodrich sought a declaratory judgment that the remand was illegal and an injunction against further proceedings as being in excess of the Commission's authority, in derogation of the Commission's statutory duty to proceed with reasonable dispatch and in violation of the constitutional requirements of due process. In opposing this suit, counsel for the Commission advised the Court that the Commission "needed additional evidence in order to decide the issues presented".¹ They assured the Court that the remand was not to be a retrial of what had gone before:

1. Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Preliminary Injunction, p. 26, served August 28, 1961.

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"On its face, the Commission's opinion shows that its remand is not seeking a retrial of matters already tried but rather envisions supplementary evidence on what is considered to be significant facts in any assessment of the competitive effects of the sales commission agreements, namely, the effects upon competing TBA suppliers stemming solely from this method of distribution * * *. Here, the remand involves developing additional evidence on the crucial issue, one that will be dispositive of the proceeding; * * *. Here, the remand involves a highly complex and complicated question in which it is sought to determine the probable competitive effects of the sales commission method of distributing TBA; * * *."

The complaint was sustained by the District Court. Thereafter, on June 19, 1962, on cross motions for summary judgment, the Court declared that Texaco and Goodrich would be entitled to relief for failure of the Commission to proceed with reasonable dispatch to conclude the proceeding unless all further evidence was heard and the decision of the Hearing Examiner contemplated by said remand was filed on or before October 2, 1962. However, the Court by order entered June 20, 1962, denied the immediate injunction requested by Texaco. In both rulings the Court relied upon the Commission's representations that it did not have sufficient evidence to establish a violation of law, expressly finding that "the Commission, having found the evidence before it inadequate to show a violation of Section 5 of the Federal Trade Commission Act, issued an order remanding the proceeding to the Hearing Examiner. * * *" Subse-

2. Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment, pp. 17, 21, filed April 30, 1962.

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quent attempts to obtain immediate temporary injunctive relief from this Court and from the United States Supreme Court were unsuccessful. *Texaco Inc., et al. v. Federal Trade Comm'n, et al.* No. 17,111; *Texaco Inc., et al. v. Federal Trade Comm'n, et al.*, No. 17,131. In opposing these applications for relief, counsel for the Commission made essentially the same representations as were made to the District Court as to the essentiality of the remand in order to develop needed additional evidence. After the remand hearings had closed on July 19, 1962, Texaco and Goodrich agreed to the dismissal of all pending judicial proceedings without prejudice.

13. During the remand hearings, which commenced on July 16, 1962 and concluded on July 19, 1962, no admissible evidence was adduced; all that occurred was that the Hearing Examiner, over the objection of Texaco, took official notice of certain materials culled in the main from the Commission's opinion in Docket 6487, the TBA proceeding against The Firestone Tire & Rubber Company and The Shell Oil Company to which Texaco was not a party. He did this in the face of the fact that the Commission in its March 9, 1961 opinion in Docket 6487, as well as in Docket 6486, the other TBA case against The Goodyear Tire & Rubber Co. and The Atlantic Refining Co., had affirmed the obvious necessity of not commingling the records in the three TBA cases and of predicating findings of fact and conclusions of law in each of those cases solely upon the basis of the record in that case. The Hearing Examiner's official notice action was challenged by Texaco on the grounds that (a) the materials involved were not properly the subject of official notice; (b) the erroneous extension of the doctrine of official notice worked a denial of Texaco's right to cross-examine and improperly shifted the burden

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of proof; (c) Texaco was denied the opportunity to rebut and disprove the materials officially noticed; and (d) in any event, these materials added nothing of substance to the record nor would they support findings contrary to those earlier reached by the Hearing Examiner regarding the legality of the sales commission agreements. On September 24, 1962, the Hearing Examiner filed a revised Initial Decision, a copy of which is attached hereto as Exhibit D. That decision repeated his earlier findings, added new findings and substituted new and contrary conclusions for those he had formerly reached. Squarely in the teeth of his own original findings reiterated in his second decision and his own original conclusions, the Examiner now concluded that the use of the sales commission method of distributing TBA violated Section 5 of the Federal Trade Commission Act. Neither this new conclusion nor the bulk of his new findings rested on the remand proceedings and they derived no support from anything that had occurred during the remand. He thus exceeded the limited authority conferred upon him by the remand order, which in no way empowered him to re-examine and make revised findings upon the pre-remand record except "in the light" of newly adduced evidence of competitive effects. Upon the basis of these wholly unauthorized new findings and conclusions the Hearing Examiner predicated a revised order which duplicated that entered by the Commission in the other two TBA cases.

14. The order is not limited to the sales commission arrangement between Texaco and Goodrich, but forecloses Texaco from participating in any sales commission plan in connection with TBA with any company. It prohibits Texaco from continuing its sales commission agreement with The B. F. Goodrich Company and from entering into or continuing similar agreements with any other supplier of tires, batteries or accessories.

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The order, in addition, contains provisions directed against coercion and against interference with the freedom of any Texaco outlet to handle TBA of its independent choice.

15. On the appeal to the Commission taken by Goodrich and Texaco, the Commission, apparently recognizing the incompetency of all the materials "officially noticed" by the Examiner, excluded from consideration everything added to the record by the remand proceedings and struck whatever findings and conclusions in the revised Initial Decision were predicated thereon. This meant that the record was in exactly the condition in which it had been when the Commission had earlier declared it to be insufficient to justify an order against Texaco. Nevertheless, without a single new fact and without any intervening change in legal doctrine, the Commission on April 15, 1963 in a 3-1 decision held the opposite of what it had previously decided on March 9, 1961, before the remand. It sustained the Hearing Examiner's new conclusion based entirely on the old or pre-remand record that a violation of Section 5 of the Federal Trade Commission Act had been demonstrated. The "other evidence of record" the Commission said, referring solely to the old record, "amply supports the conclusions and order of the Hearing Examiner." No basis for its reversal of position was set forth. As legal authority, the Commission merely cited its two other TBA decisions which it handed down on the very day when it had earlier found the instant record insufficient and had directed a remand. Abjuring explanation, the Commission said only: "The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinions of the Commission in *Goodyear Tire & Rubber Co., et al.*, Docket 6487, March 9, 1961, and *Firestone Tire & Rubber*

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Co., et al., Docket 6487, March 9, 1961." A copy of the decision and order of the Commission, dated April 15, 1963, is annexed hereto as Exhibit E.

Commissioner MacIntyre did not participate. Commissioner Anderson, who was the only member of the Commission who had participated in the earlier decision herein, did not concur "for the reason that the command of the remand order of March 9, 1961 had not been met and complied with."

The participation of Chairman Dixon, one of the members of the majority, had been unsuccessfully challenged by Texaco. Among other things urged by Texaco was the fact that before any evidence had been taken on the remand Chairman Dixon, in a speech made on July 26, 1961, had publicly denounced the practices attacked by the complaint as illegal and had specifically named Texaco and Goodrich in this connection thus reflecting such bias, prejudice and prejudgment as to disqualify him from further participation.

III. Grounds for Relief

16. The grounds on which relief is asked are:

(a) The Order, and the opinions, findings and conclusions upon which it is based, are arbitrary, capricious, not in accordance with law, without statutory authority, unsupported by reliable, competent, probative or substantial evidence, unwarranted by the facts and founded upon erroneous inferences, incompatible with the record as a whole, and were entered in violation of the requirements of due process of law and are in disregard of the provisions of the Federal Trade Commission Act and the Administrative Procedure Act;

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(b) The Commission has wholly failed to make any findings of fact to support certain of its conclusions and has failed to inform the reviewing courts and the parties by an adequate and proper statement of its findings and conclusions as to the legal and factual basis for its order, all as required by statute and necessary to due process.

(c) Since the Commission expressly excluded from its consideration the matters officially noticed during the remand and since this left nothing before it but the pre-remand record which it had held to be insufficient to support the complaint, the Commission exceeded its jurisdiction and authority in not dismissing the complaint.

(d) The decision of the Commission, issued April 15, 1963, approving the conclusion that Section 5 had been violated, is in irreconcilable conflict with the Commission's opinion of March 9, 1961 upon the identical record. The legal principles which the Commission states it is applying in issuing the order challenged here are the same legal principles it applied when it held it could not issue an order. By reaching diametrically opposed results upon the identical record, without explanation and only by virtue of having unreasonably prolonged the trial of this matter to the injury of Texaco, the Commission has acted in disregard of the requirements of the Administrative Procedure Act, has abrogated its functions under the Federal Trade Commission Act, and has denied Texaco due process.

(e) The evidence in the record will not support the conclusion that any sales commission agreement between Texaco and Goodrich or between Texaco and any other company or any practices of Texaco pursuant to such agreements constitute an unfair method of competition or an unfair or deceptive act or practice in violation of Section 5 of

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the Federal Trade Commission Act. In particular there is no substantial, probative, competent or reliable evidence of (a) coercion; (b) the existence of and/or the employment of economic power by Texaco to cause Texaco dealers involuntarily to purchase substantial amounts of TBA; and (c) adverse competitive effects or any injury to competition.

(f) The record affirmatively establishes that the sales commission plan of distributing TBA as used by Texaco is a lawful selling method and is not in restraint of trade, is not an attempt to monopolize or a conspiracy to monopolize trade in TBA, does not involve a tie-in or exclusive dealing, is not an unfair method of competition or an unfair or deceptive act or practice in commerce in violation of Section 5 of the Federal Trade Commission Act and is not in violation of any law.

(g) Texaco has been denied procedural due process and subjected to violations of the Administrative Procedure Act and the Commission's own rules in the following respects among others:

(i) The decision and order appealed from were not rendered by an impartial and disinterested tribunal acting without prejudgment.

(ii) The Commission acted unlawfully and arbitrarily in failing to proceed with reasonable dispatch to conclude its proceedings and in unreasonably prolonging such proceedings to the injury of Texaco when, after a full trial and a finding by it that the evidence did not show a violation of law, it *sua sponte* reopened and remanded the case for the taking of further evidence. The Commission breached due process in issuing such order on its own motion without request by any party, without notice of the

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contemplated action and without any showing of good cause for making the remand. In thus arbitrarily and capriciously protracting the trial of this matter without any claim or showing that there was any evidence whatever, newly discovered, inadvertently omitted or any other, bearing on the charges made in the complaint, the Commission exceeded its jurisdiction and authority and violated its own rules; it lacked the power it purported to exercise to extend indefinitely the proceeding pending before it. Furthermore, the prejudgment reflected by the order of remand violated the requirement of impartiality in administrative adjudicatory proceedings. The Commission compounded its fault and aggravated the injury done Texaco when, in order to defeat judicial action ending its improper protraction of the proceedings herein, the Commission misrepresented to the Federal Courts its need for what it claimed to be crucial, decisive, additional evidence which, however, was never forthcoming and without which the Commission nevertheless proceeded two years later to a determination directly contrary to the one it had reached earlier.

(iii) The proceedings which purported to implement the order of remand did not meet or comply with that order, were unauthorized by it and violated due process. In view of the fact that nothing was added to the record by the remand, the Hearing Examiner had no authority to make any changes in his Initial Decision or in the order based thereon. Likewise, in approving and adopting these unauthorized changes in disregard of the fact that the order of remand had not been met or complied with, that Texaco had been given no notice that the Commission viewed itself as free to reappraise the prior record despite its representations to the Courts and respondents that the remand was not to be a retrial and that Texaco, therefore, had no opportunity to adduce evidence or present argu-

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ment directed to such reappraisal, the Commission deprived Texaco of due process.

(iv) The same Hearing Examiner, while trying this proceeding, simultaneously tried other proceedings involving substantially identical issues concerning sales commission plans to which Texaco was not a party and commingled these records in his decision in this proceeding contrary to the Commission's own recognition of the necessity for treating each record separately and contrary to the requirements of due process.

(v) Evidence has been improperly admitted against Texaco; evidence admitted for limited purposes, or, as against only one party has been considered as though available for all purposes; the record as a whole has been ignored and all of the substantial, probative, competent and reliable evidence supporting the lawfulness of the challenged agreements and of the sales commission method of TBA distribution has been disregarded.

(h) The Commission's order is additionally unlawful in that it is unjustifiably broad and prohibits acts and practices unrelated to those stated in the factual findings and legal conclusions of the Commission adverse to Texaco; it is vague, inconsistent and ambiguous; and it arbitrarily denies Texaco equal opportunity to engage in the same methods of TBA distribution left open to others competing with it.

(i) The Commission's interpretation and application of Section 5 of the Federal Trade Commission Act in this proceeding violate the Fifth Amendment to the Constitution and render that statute an improper delegation of legislative authority, without any adequate standards, and

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are, further, contrary to every existing expression by Congress, the courts and the Commission itself as to the meaning and applicability of the statute.

IV. Relief Prayed

WHEREFORE, petitioner respectfully prays that this Court

- (a) review the aforesaid proceedings and the order to cease and desist entered therein and set aside said order;
- (b) issue its order directing dismissal of the Commission's complaint; and
- (c) award such further, or alternative, relief as may seem just and proper to the Court.

Respectfully submitted,

s/ JAMES O. SULLIVAN
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By s/ FREDERICK W. P. LORENZEN
Frederick W. P. Lorenzen
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Attorneys for Petitioner
Texaco Inc.

Dated: June 12, 1963

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JA 2422

**Petition to Review and Set Aside an Order of the
Federal Trade Commission
(The B. F. Goodrich Company)**

(June 17, 1963)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 17,923

THE B. F. GOODRICH COMPANY,

Petitioner,

against

FEDERAL TRADE COMMISSION,

Respondent.

*To The Honorable Judges of the Court of Appeals For the
District of Columbia:*

Petitioner, The B. F. Goodrich Company, pursuant to Section 5(c) of the Federal Trade Commission Act (15 U. S. C. §45(c)) respectfully requests this Court to review and set aside an Order and Decision of the Federal Trade Commission, respondent herein, entered on April 15, 1963 and served upon petitioner on April 22, 1963, in a proceeding entitled *In the Matter of: The B. F. Goodrich Company and The Texas Company*, Docket No. 6485, and respectfully shows:

*B. F. Goodrich's Petition to Review and Set Aside Order***I. Jurisdiction and Venue**

Petitioner is a corporation organized and existing under the laws of the State of New York, with its principal place of business in the City of Akron, Ohio. This petition is brought under Section 5(c) of the Federal Trade Commission Act (15 U. S. C. §45(c)). Venue is based upon the provision of that section permitting any corporation, required by an order of the Commission to cease and desist, to obtain judicial review by filing a petition with the Court of Appeals of the United States within any circuit where the method of competition or the act or practice in question was used or where such corporation resides or carries on business. Petitioner carries on business in the District of Columbia. The acts, practices and methods of competition which were the subject of the proceeding before the Federal Trade Commission took place within this Circuit where petitioner sells and distributes tires, batteries and automotive accessories (hereinafter "TBA") purchased by customers within the District of Columbia pursuant to arrangements prohibited by the Commission's Order.

II. The Nature of the Dispute and a Concise History of the Prior Proceedings

On January 11, 1956, after investigation commenced in 1952 or earlier, the Commission issued its complaint against petitioner and The Texas Company (hereinafter "Texaco"), asserting a violation of Section 5 of the Federal Trade Commission Act. The complaint attacked long-standing sales commission arrangements with Texaco whereby petitioner has agreed, in return for valuable sales and promotional assistance, to pay to Texaco commissions on the purchase of petitioner's TBA by service stations

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and other outlets handling Texaco petroleum products.* In addition, the complaint challenged similar arrangements between petitioner and other oil companies not parties to the proceeding and between Texaco and The Firestone Tire & Rubber Company, which was not a party to the proceeding.

Although no conspiracy was alleged, the complaint charged that all such agreements, and the acts and practices of Texaco and petitioner thereunder, constituted unfair methods of competition and unfair acts and practices within the intent and meaning of the Act. After an interlocutory appeal taken prior to any hearings in this case, the Commission directed that evidence be received concerning the "details, operation and competitive effect" of all the challenged sales commission arrangements. At the hearings, however, substantially all of the extensive evidence taken pertained to the agreement between petitioner and Texaco.

In his Initial Decision of October 23, 1959, the Hearing Examiner concluded that Texaco's contractual relationships with its dealers do not give it control over them and that petitioner had not participated in any acts or practices designed to force Texaco outlets to buy petitioner's TBA products. He held that the sales commission agreement between petitioner and Texaco was not illegal and ordered dismissal of the complaint as to petitioner. Based upon the testimony of five former dealers (Texaco has approximately 38,000 dealers across the nation, none of whom was called in support of the complaint), the Examiner found that Texaco had supposedly coerced dealers to buy "substantial quantities" of sponsored TBA and ordered Texaco to cease and desist from "overt acts of coercion."

* An alternative method of marketing TBA used by other oil companies is the purchase-resale plan, under which the oil company purchases TBA products directly from the manufacturers and then offers them for sale to its wholesale and retail outlets.

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Both counsel supporting the complaint and Texaco⁴ appealed from the Hearing Examiner's Initial Decision and Order. By its Opinion and Order, dated March 9, 1961, the four members of the Federal Trade Commission who heard the appeals remanded the case to the Hearing Examiner for the taking of additional evidence. The Commission's opinion stated:

" * * * [W]e find that Texaco has sufficient economic power over its wholesale and retail petroleum distributors, to cause them to purchase substantial amounts of sponsored TBA even without the use of overt coercive tactics. The determination of whether Texaco's exercise of such economic power in favor of Firestone and Goodyear [*sic*] under the oil company's sales commission contracts with these rubber companies constitutes an unfair method of competition depends, therefore, upon *the competitive effects* of these sales commission contracts; not upon whether Texaco has exercised its power to implement such contracts through the use of overt coercive tactics, or by more subtle, but equally effective, means.

"At issue in this litigation, then, is the legality of a particular method of distributing TBA used by respondents. A key fact in evaluating the competitive effects of respondents' use of the sales commission method of distributing TBA is the fact that Texaco has sufficient economic power with respect to its retail and wholesale petroleum distributors to cause them to purchase substantial quantities of the brand of TBA sponsored or sold by Texaco. But such economic power is a fact existing independently of any particular method of distributing TBA which Texaco may use. Whether the sales commission agreements between Firestone and Texaco and Goodrich and Texaco are unlawful must depend, therefore, upon the characteristics and

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the competitive effects of these sales commission agreements. For reasons set forth hereinafter, we conclude that this case must be remanded in order that market data may be introduced to show the competitive effects of Texaco's sales commission agreements with Goodrich and Firestone upon competing suppliers of tires, batteries and accessories at the manufacturing, wholesale and retail levels. * * * [T]he record in this case does not contain sufficient market data to enable the Commission to assess the competitive effects of the sales commission method of distributing TBA employed by these respondents. The case will be remanded to the hearing examiner for the taking of evidence indicating the competitive effects of the sales commission contracts at the manufacturing, wholesale and retail levels of TBA distribution."

The Commission further directed that, after the receipt of such evidence, the Examiner was to "indicate any changes he may wish to make in his initial decision in the light thereof." Implicit in this decision were two determinations: (1) that whatever its supposed "economic power over its wholesale and retail petroleum distributors" and whatever the means by which it supposedly "has exercised its power," an oil company's sale of TBA or its promotion of the sale of sponsored brands of TBA to its petroleum outlets is not, without more, unlawful; and (2) that the evidence then before the Commission would not support a finding that petitioner's sales commission arrangements violate Section 5, because substantial evidence of adverse "competitive effects," based upon "market data," would have to be brought forward before a violation could be found.*

* On March 9, 1961, the Commission also rendered its decisions in two companion TBA sales commission plan cases which had been

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Pursuant to the aforesaid Order of Remand, the Hearing Examiner set hearings to begin on July 17, 1961. These hearings were cancelled, however, until after the disposition of an action, filed by petitioner and Texaco on July 7, 1961 in the District Court for the District of Columbia, for an injunction to restrain the Hearing Examiner from proceeding with further hearings in this case. (Civ. Action No. 2219-61). In this injunction action, counsel for the Commission warranted that it "needed additional evidence in order to decide the issues presented."** They promised the Court that the remand was to supply evidence dispositive of the proceeding and would not involve a retrial of what had gone before:

"On its face, the Commission's opinion shows that its remand is not seeking a retrial of matters already tried but rather envisions supplementary evidence on

heard by the same Hearing Examiner and in which he had filed Initial Decisions essentially identical to that in the proceeding against petitioner and Texaco. In both of the companion cases, the Commission stated the same analysis of the issues quoted above. In those cases, however, the Commission dealt at length with evidence from which it found that "both the purchase-resale plan and the sales commission plan make use of the marketing facilities of marketing oil companies, but in different ways and with differing competitive effects." Characterizing evidence introduced in the other two cases but wholly lacking in the case against petitioner and Texaco, the Commission concluded, "The record * * * conclusively establishes, in our minds, that the sales commission contracts between [the parties there] have unlawfully injured competition in the distribution of TBA at the manufacturing, wholesale and retail levels." The Commission entered cease and desist orders against the parties to those cases. *In the Matter of The Firestone Tire & Rubber and Shell Oil Company*, Docket No. 6487; *In the Matter of The Goodyear Tire & Rubber Company and The Atlantic Refining Company*, Docket No. 6486. Appeals by the parties to those cases are now pending before the Courts of Appeals for the Fifth and Seventh Circuits, respectively.

** Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss and in Opposition to Plaintiffs' Motion for Preliminary Injunction, p. 26, served August 28, 1961.

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what it considered to be significant facts in any assessment of the competitive effects of the sales commission agreements, namely, the effects upon competing TBA suppliers stemming solely from this method of distribution. * * * Here, the remand involves developing additional evidence on the crucial issue, one that will be dispositive of the proceedings; * * * Here, the remand involves a highly complex and complicated question in which it is sought to determine the probable competitive effects of the sales commission method of distributing TBA; * * *

On June 19, 1962, the District Court, while denying an injunction, ruled that petitioner and Texaco would be entitled to relief unless the remand were completed by October 2, 1962. In so holding, the District Court relied upon the Commission's representations that it did not have sufficient evidence to establish a violation, expressly finding that "the Commission, having found the evidence before it inadequate to show a violation of Section 5 of the Federal Trade Commission Act, issued an order remanding the Proceeding to the Hearing Examiner, * * *" Petitioner and Texaco immediately filed with this Court a petition for a preliminary injunction, which was denied on June 22, 1962, after counsel for the Commission had made essentially the same representations as to the necessity of adducing additional evidence.

Upon disposition of the various motions before the District Court and this Court, the Hearing Examiner set hearings to commence July 16, 1962. At those hearings no evidence or testimony was received, but the Examiner improperly took "official notice" of certain materials which the Commission had noted in its opinion in a companion

* Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment, pp. 17, 21 filed April 30, 1962.

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case, *In the Matter of The Firestone Tire & Rubber Company and Shell Oil Company*, Docket No. 6487. After petitioner and Texaco had been effectively deprived by the Examiner's rulings of an opportunity to rebut the matters noticed, the case was closed on July 19, 1962.

In his second Initial Decision, filed September 24, 1962, the Examiner—noting that “The decision of the Commission and the matters contained in its opinion remanding this case are binding upon this hearing examiner”—completely reversed his prior position. Recognizing that as to his first Initial Decision “the Commission did not . . . take issue with the factual findings made, but disagreed with certain conclusions reached,” the Examiner reiterated verbatim each and every one of his earlier findings. In addition, he made nine “supplemental findings” based solely upon the pre-remand record, none of which had even remote bearing upon any supposed adverse competitive effects attributable to the sales commission arrangements. But in radically altering his conclusions based upon the same findings, the Examiner turned a veritable airborne somersault; substituting new conclusions representing a view of the sales commission plan diametrically opposed to his former conclusions:

First Initial Decision

“3. Neither the sales commission contract between Texas and Goodrich, nor the contracts between Texas and its dealers and distributors, contain any clause or provision requiring such dealers or distributors to purchase only Goodrich TBA.

“4. In making a determination as to whether the leases made by Texas with its dealers are used

Second Initial Decision

“1. Texaco has sufficient economic power over its wholesale and retail petroleum distributors to cause them to purchase substantial amounts of sponsored TBA, even without the use of coercive tactics. Such economic power exists independent of any particular method of distributing TBA which Texaco might use. . . .

*B. F. Goodrich's Petition to Review and Set Aside Order**First Initial Decision*

to suppress competition, the extent to which they are in conformity with reasonable requirements in the field of commerce in which they are used will have a direct bearing on their legality. The housekeeping provisions of the leases are not unreasonable or oppressive. The renewal and cancellation provisions of the leases are in conformity with those which ordinarily appear in many leases of property.

"5. The consideration for the payment of a commission to Texas under the sales commission contract is based upon substantial services rendered by Texas in promoting the sale of Goodrich TBA to Texaco dealers and distributors.

"6. No inference or implication can be drawn simply from the contractual relationship between Texas and its dealers, that the degree of control by Texas over its dealers is sufficient by force its dealers to purchase only sponsored TBA."

Second Initial Decision

"4. The use of the sales commission method of distribution by Goodrich was designed to take advantage of the economic control which Texaco had over its dealers, and by such use, Goodrich was able to obtain an unfair advantage over its competitors in selling to Texaco stations and in addition, aided and abetted Texaco in removing from the open market a substantial number of new and established Texaco dealers by causing them to purchase Goodrich TBA exclusively or in substantial quantities, and thereby excluding competitors of Goodrich who might otherwise have been able to sell their TBA to a substantial number of such Texaco dealers."

None of the Examiner's new conclusions was based upon his "supplemental findings." Moreover, the new conclusions were not supported by, but were flatly contrary to, the findings reiterated from the first Initial Decision, which

• *B. F. Goodrich's Petition to Review and Set Aside Order*

the Commission had held insufficient to establish that the sales commission arrangements are unlawful. Yet the Examiner adopted an Order which outlawed not merely petitioner's sales commission agreement with Texaco but any such arrangement, present or future, with any other marketing oil company, although he made no finding of "economic power" or other relationship of influence between any oil company and its outlets other than Texaco.

On April 4, 1963, appeals taken from the second Initial Decision by both petitioner and Texaco were heard by four members of the Commission, only one of whom had participated in the original decision. Notwithstanding the fact that the record herein consists of more than 4500 pages of testimony and thousands of pages of exhibits, just seven working days later, on April 15, 1963, the three new members of the Commission issued their decision and order.* Apparently recognizing the incompetency of all the materials "officially noticed" by the Examiner on the remand, the Commission struck from the second Initial Decision all findings and conclusions based thereon. In then adopting the second Initial Decision as thus modified, the majority explained its decision solely with this cryptic pronouncement:

"[The Commission] finds that the other [pre-remand] evidence of record amply supports the conclusions and the order of the hearing examiner. The legal principles relevant to this decision need not be reexamined here because they are set forth at length in the opinions of the Commission in *Goodyear Tire & Rubber*

* One of those three new members, the Chairman, had earlier, on July 26, 1961, delivered an extra-judicial public address in which he denounced various oil industry practices as unlawful. He expressly included the sales commission plan and specifically referred to Texaco and petitioner in a manner reflecting bias, prejudice and prejudice.

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Co., et al., Docket 6486, March 9, 1961, and Firestone Tire & Rubber Co., et al., Docket 6487, March 9, 1961."

Commissioner Anderson, the sole member who had participated in the original decision, did not concur "for the reason that the command of the remand order of March 9, 1961, has not been met and complied with."

III. Grounds For Relief

The grounds on which relief is sought include the following:

1. The Commission's findings and conclusions adverse to petitioner are not based upon substantial, probative, competent and reliable evidence, are not based upon consideration of the record as a whole, and embody erroneous and unreasonable inferences contrary to the facts of record, in that, *inter alia*:

(a) The record fails to establish that petitioner's sales commission arrangements with Texaco or any other oil company have adverse competitive effects at the manufacturing, wholesale or retail levels of TBA distribution;

(b) The record fails to establish that Texaco or any other oil company with which petitioner has sales commission arrangements either has or exercises "economic power" so as to inhibit the freedom of choice in purchasing TBA of the retail dealers and wholesale distributors of such oil companies, thereby causing those dealers and distributors to purchase substantial amounts of petitioner's or other TBA sponsored by such oil companies;

(c) The record fails to establish that use of the sales commission method of TBA distribution by peti-

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tioner was designed to take advantage of the purported "economic control" which Texaco or any other oil company supposedly has over its dealers and distributors or that petitioner has thereby obtained any unfair advantage over its competitors;

(d) The record fails to establish that Texaco or any other oil company having sales commission arrangements with petitioner removed from the open market new or established dealers and distributors of such oil companies, causing such dealers and distributors to purchase petitioner's or other TBA sponsored by such oil companies and thereby excluding competitors of petitioner who might otherwise have been able to sell their TBA to such dealers and distributors; and

(e) The record fails to establish that dealers and distributors of Texaco or any other oil company with which petitioner has sales commission arrangements failed to purchase competing TBA, not sponsored by such oil companies, because of their feeling or understanding that they were required to purchase petitioner's or other TBA sponsored by such oil companies.

2. The Commission has wholly failed to make any findings of fact to support certain of its conclusions and has failed to state adequately, with the simplicity and clarity necessary for a reviewing court to determine whether its decision is right or wrong, certain of its factual findings and legal conclusions, all as required by the Federal Trade Commission Act, by the Administrative Procedure Act, and by the requirements of due process.

3. The Commission, in completely disregarding all of the substantial, probative, competent and reliable evidence supporting the lawfulness of the sales commission method

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of TBA distribution, denied petitioner due process of law and violated the requirements of the Administrative Procedure Act.

4. The Commission's conduct of this proceeding has been arbitrary and capricious and has denied petitioner due process in that, *inter alia*, the Commission has failed to adjudicate this matter objectively, impartially and without prejudgment, at different times and with changes in its membership it has taken wholly contradictory and irreconcilable positions on exactly the same evidence of record, and it has unreasonably prolonged trial of this matter to the injury of petitioner, particularly in misrepresenting to the Courts, in order to defeat an injunction against remand hearings, the necessity to the Commission's determination of additional evidence never thereafter introduced or considered by the Commission.

5. The record affirmatively establishes that the sales commission method of distributing TBA as employed by Texaco and other oil companies with which petitioner has such arrangements is a lawful method of distribution, is not in restraint of trade, does not involve any attempt to monopolize or any conspiracy to monopolize trade in TBA, does not involve tie-in or exclusive or preferential dealing requirements, and is not an unfair method of competition or an unfair or deceptive act or practice in commerce in violation of Section 5 of the Federal Trade Commission Act.

6. The Commission's Order is unjustifiably broad and unrelated to the acts and practices stated in the factual findings and legal conclusions of the Commission adverse to petitioner and arbitrarily denies petitioner equal opportunity to engage in the same methods of TBA distribution left open to others competing with it.

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7. The Commission's interpretation and application of Section 5 of the Federal Trade Commission Act in this proceeding violate the Fifth Amendment to the Constitution and render that statute an improper delegation of legislative authority, without any adequate standards, and are, further, contrary to every existing expression by Congress, the courts and the Commission itself as to the meaning and applicability of the statute.

IV. Relief Prayed

WHEREFORE petitioner respectfully prays that this Court review the aforesaid proceedings and the order to cease and desist entered thereon, and set aside such findings conclusions and order, as well as direct the Commission to dismiss its complaint against petitioner and to award such further or alternative relief as may seem just and proper.

The undersigned counsel of record hereby verify that the statements of fact set forth above are true.

Dated: June 14, 1963

Respectfully submitted,

WHITE & CASE

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